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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

IMRAN ALRAI

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1:18-cr-192-JL

December 3, 2020

9:10 a.m.

TRANSCRIPT OF EVIDENTIARY HEARING  
DAY TWO - MORNING SESSION  
VIA VIDEOCONFERENCE  
BEFORE THE HONORABLE JOSEPH N. LAPLANTE

Appearances:

For the Government:

John S. Davis, AUSA  
Matthew Hunter, AUSA  
Cam T. Le, AUSA  
United States Attorney's Office

For the Defendant:

Donna J. Brown, Esq.  
Michael Gregory Eaton, Esq.  
Wadleigh, Starr & Peters PLLC

Also Present:

John Commisso, Esq.  
Commisso Law PC

Court Reporter:

Liza W. Dubois, RMR, CRR  
Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, New Hampshire 03301  
(603)225-1442

## I N D E X

<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
JASON SGRO		6	116	119

1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for  
3 consideration this morning day two of an evidentiary  
4 motion hearing in criminal case 18-cr-192-JL, United  
5 States of America vs. Imran Alrai.

6 And, Mr. Sgro, the Court reminds you that  
7 you're still under oath.

8 THE WITNESS: Understood.

9 THE COURT: Thank you for doing that, Charli.

10 I was -- Charli informs me that Mr. Davis may  
11 have to take a break in the proceeding at about 10:00  
12 for a sentencing and then will rejoin later. That's not  
13 a problem.

14 I want to apologize in advance if anything  
15 happens similar with me. If it does -- there might be a  
16 couple of points during the day where I might need five  
17 minutes to tend to something, just because there's a lot  
18 of things going on at the moment. But if it does  
19 happen, it will be very brief. I can -- it won't be any  
20 kind of -- not even like a 15-minute break; like a  
21 five-minute break to sign something or actually speak to  
22 somebody that would direct my attention away from you.

23 If I can handle it while I'm listening, I  
24 will, but if I can't, I'm going to have to take a --  
25 maybe a couple times today -- a very short break.

1           Before we get started, Attorney Brown, why  
2           don't you just tell me what you have in store today.

3           MS. BROWN: Yes, your Honor. We have a  
4           continuation -- the government is continuing their  
5           cross-examination of our expert.

6           We have two witnesses that are available: One  
7           is Attorney Commisso, who I see here; the other is  
8           Mr. Meyer, who was a trial witness.

9           It might make sense, if the Court could give  
10          us maybe even just two or three minutes after Mr. Sgro's  
11          testimony -- I think it might be a good time for a break  
12          anyway; they're saying -- the government's saying about  
13          an hour and a half -- and we can evaluate whether we  
14          need -- you know, who we're calling first and whether we  
15          need both of them.

16          And so that -- so in sort of the more  
17          expansive scenario, we'd be calling both of them after  
18          the government's done with the cross-examination. We  
19          may reevaluate that and --

20          THE COURT: Sure.

21          MS. BROWN: -- we'll let you know.

22          THE COURT: I know in the courtroom we try to  
23          roll right through witnesses and all, but with people  
24          isolated, I don't think it's unreasonable to give you  
25          five minutes between witnesses to kind of communicate

1 with who you need to talk to and get your bearings. So  
2 that's totally reasonable.

3 MS. BROWN: And along those lines, your Honor,  
4 you may see me looking away from the computer at my cell  
5 phone. It's not that I'm double-tasking. If my client  
6 has a question of me, I've instructed him to send me a  
7 text. That's just better than emails and having to deal  
8 with my emails.

9 So if I'm looking away, it's not that I'm  
10 distracted from this hearing --

11 THE COURT: Absolutely.

12 MR. BROWN: -- it's to see if my client has a  
13 question.

14 THE COURT: No need to apologize. You know, I  
15 teach law students three semesters a year and I'm lucky  
16 if I get them not to black out their screen sometimes.  
17 So please don't worry about that.

18 Anybody -- you know, I understand life's  
19 complicated. If you've got to tend to something or look  
20 away, it's not a big deal.

21 Okay. Rest assured, though, I'm paying  
22 attention.

23 Let's resume. Attorney Le, you can resume  
24 your cross of Mr. Sgro.

25 MS. LE: Thank you, Judge.

1                                    CONTINUED CROSS-EXAMINATION

2       BY MS. LE:

3                Q.     Now, Mr. Sgro, when we left off on  
4       November 17th, we were discussing -- discussing whether  
5       you conducted an independent --

6                    THE COURT:    Time out.    Time out.

7                    Cam, you're very faint.

8                    MS. LE:    Oh, I am?

9                    THE COURT:    Yeah, at least in my mind.    I  
10       don't know about Mr. Sgro.

11                   How are you doing with that?

12                   THE WITNESS:    Yeah, it's very quiet.

13                   THE COURT:    Yeah, you're very faint.

14                   MS. LE:    This is the one circumstance where  
15       I'm actually quiet --

16                   THE COURT:    Right.

17                   MS. LE:    -- right?

18                   THE COURT:    That's actually better.    Whatever  
19       you're doing right now, it's working.

20                   MS. LE:    I'm yelling.    Does that help?

21                   THE COURT:    Yeah, I don't want --

22                   THE WITNESS:    Yeah.

23                Q.     All right.    Mr. Sgro, sorry about that.    Is  
24       this better?

25                A.     Yes.    And if I don't understand something,

1 I'll -- forgive me, but I'll just ask you to repeat.

2 Q. No, that's exactly what I want you to do.

3 Okay?

4 So, Mr. Sgro, when we left off on  
5 November 17th, I was asking you whether you conducted an  
6 independent analysis of DigitalNet's services as it  
7 related to CloudConnect. Do you remember that?

8 A. I do remember that, yes.

9 Q. Okay. And I think when we got into that  
10 subject, you said -- and I'm quoting here: So I was  
11 never permitted to see the DigitalNet CloudConnect  
12 services.

13 Do you remember that statement?

14 A. Yes, I -- that sounds like the correct  
15 statement, yes.

16 Q. Okay. Sir, are you aware that Mr. Alrai  
17 discontinued CloudConnect as a vendor in April of 2016?

18 A. I'm aware only of the contracts that I got to  
19 review. I'm not aware necessarily of when they -- when  
20 things were in progress or being used or disconnected.

21 Q. Okay. But based on review of contracts as  
22 well as invoice payments, there were no additional  
23 payments to CloudConnect as it relates to United Way  
24 after April 2016; will you agree with me about that?

25 A. I believe that is correct.

1           Q.     Okay. And so that would be about -- a little  
2 over two years before RSM was retained by United Way in  
3 this case, right?

4           A.     That -- that timeline seems to be true, yes.

5           Q.     Okay. So it would be fair to say that RSM  
6 also could not see DigitalNet's CloudConnect services  
7 that ended before they became involved, right?

8           A.     It is reasonable that -- it's fair that you  
9 can't analyze something that was disconnected before  
10 you're involved. However, that's not the only cloud  
11 environment in question here, so I think it's important  
12 that we understand that there was cloud environments  
13 available during the RSM engagement --

14          Q.     Right.

15          A.     -- that were not made available to me.

16          Q.     Okay. But my question is that RSM would not  
17 have had access to the CloudConnect environment that had  
18 ended two years before they were engaged.

19          A.     You can definitely not look at something that  
20 doesn't exist before your engagement.

21          Q.     Thank you.

22                 So is there anything new in the posttrial  
23 discovery that suggests to you that Mr. Naviloff or  
24 anyone at RSM reviewed anything beyond contract platform  
25 specifications and invoices to determine loss as it



1 relates to CloudConnect for the period of January 2013  
2 through April 2016?

3 A. So I do recall in the posttrial discovery  
4 production of documents conversation about a transfer of  
5 services in the cloud environment that has to do with  
6 moving -- I believe moving away from CloudConnect and  
7 into the other data systems.

8 Q. Okay. Well, that dovetails perfectly into the  
9 next exhibit that I want to talk about. Okay, sir?

10 Tracy, can you pull up Defense Exhibit Nn?

11 Mr. Sgro, can you see that?

12 A. Yes, I can.

13 MS. LE: Is that Nn? No, I'm sorry, Tracy.  
14 N, as in night.

15 Q. And, sir, are these the internal RSM emails  
16 that you were just referring to from September 16  
17 through September 17th, 2019?

18 A. I apologize. That is extremely small. Could  
19 we bring some of that out?

20 Q. Yeah. Let's see.

21 A. So this is an email from Ryan, Mr. Ryan  
22 Gilpin, to Mr. Chris Fitzgerald talking about an overlap  
23 in services between Insight and CloudConnect.

24 Q. So is this the email that you were just  
25 referring to or the discussion that you were just

1 referring to?

2 A. Yeah, this would be an example of that.

3 Q. Okay. Do you have a copy of this exhibit in  
4 front of you? Because it might be easier for us just to  
5 review if you have it in front of you.

6 A. I have a digital copy, but it will make our  
7 window very small.

8 Q. I see.

9 A. Would you mind going through this?

10 Q. Sure.

11 Well, Tracy, can you scroll down slowly to the  
12 next section, the first contact on down right before the  
13 signature block? Maybe that'll help.

14 A. Yes, that's much better.

15 Q. Okay. And I just want you to review this.  
16 I'm not going to ask you to read everything out loud.

17 So are you familiar with the email I'm talking  
18 about here?

19 A. Yes, I'm familiar with this email.

20 Q. Okay. And would it be fair to say that in  
21 these emails, Mr. Gilpin and his colleagues at RSM are  
22 discussing invoices and records that they had obtained  
23 related to CloudConnect and Insight, correct?

24 A. That appears to be the case, yes.

25 Q. Okay. And it looked like at least in this

1 exchange that before they received those records, RSM  
2 didn't know that CloudConnect was the vendor before  
3 Insight; is that right?

4 A. I couldn't speculate as to what they knew or  
5 not from the email chain, but this is definitely talking  
6 about the -- the fact that there's potentially an  
7 overlap, in the opinion of Mr. Gilpin, between those --  
8 those three to four months.

9 MS. LE: Can we go down to the next section,  
10 Tracy?

11 Q. Okay. Have you reviewed this? Are you good  
12 with that, Mr. Sgro?

13 A. Yes.

14 MS. LE: Tracy, can we go to the second page?  
15 Or, actually, the bottom of that page. I'm sorry. I  
16 missed a section. The bottom of the page.

17 Do you see the body of the email at the  
18 bottom? Can we highlight that for Mr. Sgro?

19 Q. Mr. Sgro, can you review that to yourself?

20 A. Okay.

21 Q. Okay. So this goes into discussing how they  
22 had some speculation about records and then they have to  
23 essentially kind of reevaluate their opinion based on  
24 the new records that they had obtained, right?

25 A. That seems like a fair analysis.

1           Q.     Okay.  And is it fair to say based on the  
2     stuff that we just looked at in the email exchange that  
3     when Mr. Gilpin discussed -- makes comments about  
4     certain records, he's citing the Bates number of those  
5     documents; is that right?

6           A.     Where Mr. Gilpin is?

7           Q.     Yes, yes.

8           A.     I see some Bates number cites in this email  
9     chain, yes.

10          Q.     Yes.  And are you aware that those Bates  
11     numbered documents that Mr. Gilpin has cited were  
12     obtained from CloudConnect through grand jury subpoena?

13          A.     I'm not aware of how they were obtained, but  
14     they have Bates numbers, so I see that they were  
15     obtained.

16          Q.     Okay.  And did you review those same Bates  
17     numbered documents that are referenced in this email  
18     chain?

19          A.     I couldn't be sure.  I can look at those Bates  
20     numbers if you would like to.

21          Q.     Sure.  But are you aware that we have produced  
22     the records obtained from CloudConnect through grand  
23     jury subpoena in pretrial discovery?

24          A.     I believe there are documents pertaining to  
25     that produced.  Whether or not those are comprehensive,

1 I do not know.

2 Q. Okay. And you understand that those records  
3 that were obtained through CloudConnect were through  
4 grand jury subpoena, not from RSM, right?

5 A. I take your word for that, yes.

6 Q. Okay. And based on --

7 A. I don't -- I apologize.

8 I don't know that for a fact. I just --  
9 I'm -- I assume that you're asserting the correct place  
10 where they originated from.

11 Q. Right. Well, I'm an officer of the court, so  
12 I'm going to represent to you that all of the records we  
13 obtained from CloudConnect were produced in pretrial  
14 discovery.

15 A. I have no problem with that.

16 Q. And if I'm wrong, I'm sure counsel will  
17 correct me. Okay?

18 A. Fair enough.

19 Q. All right. So would it be fair to say based  
20 on this line of questioning I've asked you, and this is  
21 one example of an email, that no one at RSM could have  
22 conducted what -- you know, for lack of a better word, a  
23 live analysis of DigitalNet's services as it related to  
24 CloudConnect?

25 A. Based on the timeline, I think it's fair to

1 say that there's a possibility that there's not a live  
2 analysis. I think that what -- what happens is those  
3 services were transitioned from one vendor to another  
4 vendor and so my expectation would be that the services  
5 do still exist, just being hosted by another vendor.

6 Q. Okay. And the person who would know whether  
7 that cloud environment still exists, would that be your  
8 client as a CIO of United Way and as the principal of  
9 DigitalNet?

10 A. During his tenure, I would expect him to have  
11 knowledge of the infrastructure of United Way.

12 Q. All right. So, sir, let's move on.

13 United Way paid DigitalNet for infrastructure  
14 hosting, desktop virtual -- virtual desktop --

15 A. Virtual desktop.

16 Q. -- data management and high availability  
17 backup storage.

18 Wow, that was hard.

19 That totaled about \$2.6 million, right?

20 A. That seems fair, yup. Those --

21 Q. Okay.

22 A. -- are the right services. That's  
23 approximately perhaps the right number.

24 Q. Okay. And during that time period, DigitalNet  
25 paid CloudConnect about \$300,000; isn't that right?

1 A. From my recollection, that seems accurate.

2 Q. Okay. And those numbers I've cited to you,  
3 that came from invoices and banking account records,  
4 right?

5 A. Yes. I would assume so, yes.

6 Q. Okay. And to Mr. Naviloff at least, that  
7 difference between 2.6 million and \$300,000 suggested an  
8 excessive billing for CloudConnect-related services; is  
9 that fair?

10 A. No, I don't think that's fair. I think --

11 Q. No, no. Sir, let me be clear. That's  
12 Mr. Naviloff's opinion. Is that a fair summary of his  
13 opinion, that the gulf between --

14 A. I think that -- I apologize.

15 Q. -- what United Way paid and what DigitalNet  
16 paid showed excessibility in his mind?

17 A. I agree that he believes those numbers are  
18 related in a more direct way than they're actually  
19 related.

20 Q. Sure. And he based his analysis on review of  
21 DigitalNet's Master Services Agreement with United Way,  
22 with their IT Services Agreement with United Way, by  
23 comparing those records and contract terms with the  
24 CloudConnect agreement and CloudConnect platform  
25 specifications; isn't that right?

1           A.     He did a -- my understanding is that he did a  
2     contracts- and invoices-related financial analysis.

3           Q.     Okay. And did you do the same kind of  
4     analysis?

5           A.     So I did not do a financial-related analysis.  
6     That would be beyond the scope of my technical  
7     expertise.

8           Q.     Sure. But how about a comparison of the terms  
9     of DigitalNet's contracts with United Way and  
10    DigitalNet's contracts with its vendor, CloudConnect?  
11    Did you do that?

12          A.     I did look at those contracts, yes.

13          Q.     Okay. And did you review the provisions --  
14                  Actually, Tracy, can we pull up Exhibit 3,  
15    which is DigitalNet's Managed IT Services Agreement with  
16    United Way.

17                  Are you familiar with this document, sir?

18          A.     I am.

19          Q.     And did you review the provisions of this  
20    contract as it related to infrastructure hosting?

21          A.     I believe so, but can we flip to that page  
22    just to refresh me?

23          Q.     Yeah. Let me turn to the right page. I'm  
24    going to use my hard copy because it'll be easier for me  
25    to do than read here, if you don't mind. So if you can



1 just give me a minute.

2 A. Not a problem at all. I just want to make  
3 sure we're talking about the same thing.

4 Q. Sure. And do you have a hard copy, by any  
5 chance?

6 A. I do not.

7 MS. LE: All right. So, Tracy, if you can go  
8 to the page that is Bates labeled at the bottom 15985.

9 Q. Do you see that, sir?

10 A. I do.

11 Q. Okay. At the top we have a section called  
12 Hosting.

13 A. Correct.

14 Q. Okay. And are you familiar with those terms?

15 A. Yes.

16 Q. Okay. Do you see Data Management and Backup  
17 right below that?

18 A. I do.

19 Q. And you see the Virtual Desktop?

20 A. I do.

21 MS. LE: Tracy, can you go to the next page?

22 Q. So we have Network Infrastructure and  
23 Engineering. Do you see that?

24 A. I do.

25 Q. Okay. And it lists a bunch of other services,

1 right?

2 A. Correct.

3 MS. LE: Okay. Tracy, can you pull up  
4 Exhibit 4, which is CloudConnect's Partnership Agreement  
5 with Mr. Alrai's company, AISA.

6 Q. Are you familiar with this contract, sir?

7 A. I believe that I am, yes.

8 Q. You've read through various provisions of this  
9 document. I don't want to go through the whole thing.

10 A. Yeah, we don't -- we don't have to.

11 MS. LE: Okay. All right. And then I want to  
12 pull up Exhibit 5, Tracy, which is CloudConnect's  
13 platform specifications.

14 Q. Are you familiar with that document as well,  
15 sir?

16 A. I am.

17 Q. All right. And Mr. Naviloff, as part of his  
18 expert report, actually created a comparison table,  
19 right?

20 A. Yes. Yes, I believe he did.

21 MS. LE: All right. Tracy, can we pull up  
22 Government's Exhibit 1? And if you go to page 13 -- I  
23 think it's 13.

24 All right. Do you see that Table 1? Can we  
25 pull that up and highlight it?

1           Q.     So this is the table I was referring to. This  
2 one is a comparison of the CloudConnect agreement and  
3 the IT services -- IT service agreement, right?

4           A.     Yes, it appears to --

5           Q.     Okay. So based on your review of the relevant  
6 documents, does Table 1 fairly and accurately describe  
7 the similarities and differences between the relevant  
8 provisions?

9           A.     This appears to be a fair side-by-side  
10 comparison. I can't be sure that everything is  
11 accurate, but I think generally it's there.

12          Q.     Okay. So do you -- do you see why  
13 Mr. Naviloff in his assessment believed that there was  
14 kind of a complete transfer of services in these  
15 categories?

16          A.     I can see this is part of the mistake he made  
17 in evaluating this, yes.

18                MS. LE: Okay. Tracy, can we pull up  
19 Government's Exhibit 1a, which is Mr. Naviloff's summary  
20 chart that we presented at trial. I think I need you to  
21 pull up page 13 as well for this one.

22                Can you go to the next page? I'm sorry.

23                Here we go.

24          Q.     So this is a table -- this time Mr. Naviloff  
25 compared CloudConnect's platform specifications with

1 DigitalNet's Managed IT Services Agreement terms; is  
2 that right?

3 A. This appears to be the same or very similar  
4 chart.

5 Q. Okay. And based on your review of the  
6 relevant documents, does this table fairly and  
7 accurately describe the similarities and differences  
8 between the relevant provisions?

9 A. That seems fair. If this is the same as the  
10 last chart, I think that my comments would be the same,  
11 yeah.

12 Q. Well, it's not the same chart because the last  
13 table related to CloudConnect's contract and this one is  
14 a comparison of the platform specifications. Does that  
15 make sense?

16 A. Oh, yeah. Yeah. Yup. Yes, so these -- this  
17 seems like a fair comparison.

18 Q. Okay. Great.

19 But -- and correct me if I'm wrong, but it's  
20 your position that Mr. Naviloff's approach was not an  
21 apples-to-apples comparison, right?

22 A. That -- that is true. I think we have to put  
23 that in context. It's not an apples-and-apples  
24 comparison from the perspective of the invoices he's  
25 analyzing on one side versus the other side.

1 Q. Okay.

2 A. Some of the services passed through in a  
3 vendor model, right, in a value-added reseller, a VAR  
4 model, are absolutely passed through from the -- the  
5 originating vendor and then passed through by the  
6 value-added reseller to the end client.

7 It's -- the -- those services, whether they're  
8 at the platform level or at the contract level, are  
9 definitely, you know, cumulative, right?

10 So as you go up the chain towards the actual  
11 person consuming the services, you're -- you're going to  
12 see the sum total of those types of services.

13 Q. Okay. Let me ask the question another way.

14 A. Okay.

15 Q. I think it's your position that these services  
16 provided by CloudConnect can't be directly passed on to  
17 United Way without substantial engineering, management  
18 being performed by DigitalNet; is that right?

19 A. So that's inaccurate, but only a little bit.

20 Q. Okay.

21 A. Let me explain.

22 So certain types of these services are passed  
23 directly through the -- DigitalNet and consumed by the  
24 United Way because they're infrastructural in nature,  
25 right?

1 Q. Okay.

2 A. United Way doesn't necessarily change the  
3 underpinnings of the sandbox, if you will. If you think  
4 of CloudConnect as a sandbox, then DigitalNet doesn't  
5 change the nature of the sandbox. Those services are  
6 passed straight through to the United Way. However,  
7 those services by themselves are not really all that  
8 useful to a company like the United Way without  
9 engineering and an intermediary to build certain  
10 components of it.

11 So it -- what you said is unfair of my  
12 analysis only in that there are certain aspects that  
13 need to be worked on by an intermediary and certain  
14 aspects that are, in fact, passed through. And that is  
15 a normal business practice.

16 Q. Okay. So are you aware that DigitalNet  
17 charged United Way -- charged United Way separately for  
18 initial vendor deployments, setup and implementation,  
19 the infrastructure equipment purchase setup and  
20 implementation, the virtual desktop equipment purchase,  
21 setup and implementation?

22 A. Yeah. So the not all of that is in direct  
23 relation here.

24 Q. Okay.

25 A. You know, I want to make sure we're separating

1 some of those items.

2 When we talk about a cloud environment, we're  
3 not talking about equipment and things of that nature,  
4 right? So that's kind of out of the scope of this  
5 particular conversation.

6 Q. Right.

7 A. But --

8 Q. Let me -- let me stop you there.

9 In fact, \$600,000 for that initial  
10 implementation wasn't included in Mr. Naviloff's  
11 assessment; isn't that right?

12 A. Yeah, so I believe that he moved his  
13 assessment into things he did analyze and things he  
14 didn't analyze. And there were certain projects  
15 including things like you have just labeled that were  
16 not part of his assessment.

17 Q. Okay. So can you be more specific about what  
18 those added value services were that kind of explained  
19 the gulf of about a million dollars between what United  
20 Way paid to DigitalNet and what DigitalNet paid to  
21 CloudConnect?

22 A. Well, you know, without, you know, really  
23 looking at the environments, it's hard to say exactly,  
24 but I could give you some examples of those. Right? My  
25 list here is not comprehensive.

1           Q.     Wait. All I want to know is like not  
2     hypothetical, but in this case --

3           A.     Yeah.

4           Q.     -- do you have any information for any extra  
5     services that can account for that million-dollar  
6     difference?

7           A.     Yes. So let me give you an example in this  
8     case, like that would be relevant to this exact example.

9           Q.     All right.

10          A.     When you talk about virtual desktop  
11     environments, what -- which is -- I think we would agree  
12     is part of this equation here, this actual example that  
13     you've given me.

14                 A virtual desktop environment, if you were to  
15     purchase one from a vendor like CloudConnect, the  
16     hosting, and then the end user were to sit down at  
17     their -- their desktop, then nothing would happen.  
18     Right? There's an ongoing -- you first have to build  
19     within that environment in order to make it useful to  
20     the end user, which CloudConnect does not do. There's  
21     not anywhere in their contracts that they provide those  
22     services. They don't -- they're not providing the  
23     updates to those images; they're not providing any of  
24     the engineering that happens -- that is required for the  
25     ongoing maintenance and whatnot of those images for the



1 actual desktop users.

2 And so, traditionally -- and I'll stray only  
3 for a moment if you'll indulge me -- a virtual desktop  
4 environment is not a service that you buy, set it, and  
5 forget it. It requires constant maintenance at an  
6 engineering level and constant diligence with -- from an  
7 expert. Right? These things do not run themselves.

8 And the use of the services inside of the  
9 United Way is not something that CloudConnect, in my  
10 version -- in my view of their contracts provides at  
11 all.

12 So that's one example of the types of value  
13 that an intermediary like DigitalNet would have to  
14 provide.

15 Q. But isn't it true that DigitalNet paid --  
16 charged separately for the engineering work, too?

17 A. No, I don't -- see, I don't think that that's  
18 accurate. I think what you're looking at is -- the  
19 engineering work for the initial setup, I think you're  
20 correct. I think there are projects that would -- that  
21 DigitalNet charged extra for, but that is not the  
22 totality of what it takes to keep a service like this  
23 operational over a long period of time like we're  
24 talking about.

25 There's a significant amount of cost to any IT

1 organization. The majority of the cost is actually in  
2 head count. Right? It's generally salary for experts.  
3 And that's where a lot of this cost comes from. And I  
4 think -- you know, I can't say to you definitively  
5 there's a million dollars here. I can tell you that  
6 there's things here of the nature of which I just spoke  
7 that are not part of initial setup and things of that  
8 nature.

9 Q. Right. And I'm not talking about the initial  
10 setup, which was specifically excluded by Mr. Naviloff.  
11 What I'm talking about is what accounts for that  
12 million-dollar difference, especially here, where we  
13 know that the IT help desk folks, those two folks  
14 embedded there, were not included. Mr. Wahbe's salary,  
15 who provided a lot of the engineering and off-hours  
16 support were not included; and we have Imran Alrai, who  
17 is also the CIO for United Way and the principal for  
18 DigitalNet.

19 How do you account for that million dollars  
20 when you take those persons out of it?

21 A. So -- so that's a great question. Thank you.

22 There's -- the CIO is not a person --  
23 generally, the CIO is a not a technical expert at this  
24 level, right? So I wouldn't imagine that the CIO of an  
25 organization has the ability to maintain a virtual

1 environment at all. That would be very uncommon.

2 So -- so that would eliminate that from this  
3 part of the puzzle.

4 A help desk really is limited in the type of  
5 support -- generally in an IT organization, the help  
6 desk is the lower rung of the technical expertise. And  
7 that's not to say anything against help desk folks.  
8 That's where most of us started our careers. But that's  
9 not the type of engineering expertise that would be  
10 required for an example like this.

11 Q. Okay. I think it's probably fair to say that  
12 you and I probably won't agree on an explanation for  
13 that million-dollar gulf, right?

14 A. I mean, I -- I suppose that perhaps not, but I  
15 would -- but I think that the point is just that there  
16 is engineering expertise that is required to make use of  
17 the CloudConnect services that the United Way doesn't  
18 have, right, and has to be provided by DigitalNet at  
19 that point.

20 Q. Okay. So that seems like there is some  
21 subjective aspect related to evaluation in that regard;  
22 would that be fair to say?

23 A. See, I don't -- I don't see that as being  
24 subjective at all. I think it's an objective truth that  
25 a virtual environment purchased by CloudConnect is not

1     useful to the United Way in the manner which  
2     CloudConnect presents it, right, in that a help desk  
3     person and a CIO don't bridge that gap.

4             So to the extent that maybe we don't agree  
5     upon that, I think that's -- that is an objective truth,  
6     though. That's not really my point.

7             Q.     Okay. But since Mr. Naviloff and RSM had to  
8     conduct kind of an historical evaluation, would you  
9     agree with me that their reliance on review of  
10    contracts, comparison to platform specifications and  
11    invoices is an objective and reasonable accounting  
12    methodology?

13            A.     I believe that the review of contracts is  
14    objective. I can't speak to whether or not something is  
15    reasonable from an accounting methodology perspective,  
16    but I think this does illustrate the gap in their  
17    analysis and why the numbers they come up with I feel  
18    are not accurate, right?

19            Looking at these services through a  
20    nontechnical lens will lead you to make comparisons  
21    between contracts that are -- that are just  
22    fundamentally inaccurate.

23            Q.     Right. And didn't Mr. Naviloff basically  
24    explain that he knew that there were shortcomings  
25    through this type of historical analysis?

1           A.     And this is my recollection of his testimony.  
2     He did say that, of course, nothing is perfect and I  
3     agree that nothing is perfect, but this -- this isn't a  
4     minor issue. This is a fundamental misunderstanding of  
5     the services and this becomes much like in my previous  
6     testimony on -- last week or two weeks ago, I  
7     apologize -- where a misunderstanding of the zip.us  
8     services led them to compare invoices that are just not  
9     related in the way that they are saying. Right?

10           So to what degree that numbers might move a  
11     little bit and there might be a yield where there's some  
12     inaccuracy, I can accept that, but these are significant  
13     oversights.

14           Q.     But you understand that that's part of the  
15     reason, the limitations of this kind of historical  
16     analysis and trying to find apples to compare to apples  
17     was the reason Mr. Naviloff conducted his separate  
18     personal enrichment analysis that result in a higher  
19     loss amount. You understand that, right?

20           A.     I understand that he provided two analysis --  
21     two financial analyses, yes.

22           Q.     And Mr. Kennedy took no issues with that  
23     separate personal enrichment analysis; isn't that right?

24           A.     I can't speak for Mr. Kennedy.

25           Q.     Okay. So let's move on to the services that

1       were provided through Insight/OVH.   Okay, sir?

2           A.     Sure.

3           Q.     All right.   And it's my very basic summary  
4       that you disagree with Mr. Naviloff that DigitalNet  
5       double-billed United Way for Insight/OVH Services based  
6       on his comparison of their invoices for infrastructure  
7       as a service and hosting; is that right?

8           A.     That's fair.

9           Q.     Meaning you don't think they were  
10      double-billing?

11          A.     I -- well, I -- what I think is that  
12      there's -- I don't see evidence to suggest that there is  
13      necessarily double-billing.   There are a couple of  
14      scenarios in which case double-billing would not be the  
15      answer.

16          Q.     Okay.   So have you -- and you understand that  
17      RSM was unable to locate any contracts between United  
18      Way and OVH/Insight.   Are you aware of that?

19          A.     I don't believe I was aware of that, but I'll  
20      take your word for it.

21          Q.     Okay.   Nowhere do they -- in their analysis do  
22      they make reference to contract comparisons; is that  
23      right?

24          A.     I believe that's correct.

25          Q.     And they relied pretty heavily on invoices;

1 isn't that fair?

2 A. I believe that is true.

3 Q. Okay. And had you reviewed the Insight  
4 invoices that were submitted to United Way?

5 A. Yes, I have reviewed some, but I'll be happy  
6 to go through them with you if you'd like.

7 MS. LE: Okay. Tracy, can you pull up  
8 Government Exhibit 6?

9 Q. All right. This is hundreds of pages of  
10 invoices, Mr. Sgro, so I'm not going to make you look  
11 through every one of them. And I will represent to you  
12 that these invoices were obtained and produced pretrial.  
13 And does this comport with your recollection?

14 A. Yes, that seems fair.

15 Q. Okay. And are you aware that United Way paid  
16 each of these invoices directly to Insight?

17 A. I am aware of that, yes. I believe that's  
18 true.

19 Q. So let's pose an example, okay, one that's  
20 kind of easy. And I've picked this kind of at random;  
21 there's no real theory to it.

22 Tracy, can you go to page 139? And that  
23 should be an invoice dated March 27, 2017.

24 Do you see the invoice date at the bottom,  
25 sir?

1           A.     I do.

2           Q.     This should be for \$5,924.13. Do you see  
3 that?

4           A.     That's correct.

5           Q.     And this invoice is two pages long, so we're  
6 looking at the first page.

7                     Can you go to the next page, Tracy, just so  
8 Mr. Sgro can see it.

9                     Do you see that, sir?

10          A.     Yup.

11          Q.     All right. And can you tell me a little bit  
12 about what these services are?

13          A.     So I think it's helpful if we go back to  
14 the first page or do you want to know about these  
15 particular --

16          Q.     You can go back to the first page.

17                     Tracy, can you do that for me?

18          A.     So this is for a VMware, which is a  
19 technology-based virtual private cloud, right, so a  
20 cloud environment of a certain specification which is  
21 detailed out here; a -- some licensing as a -- as part  
22 of that; and a -- looks like a VMware subscription,  
23 some -- some technical support for the private cloud.

24          Q.     Okay. And there's technical support for the  
25 private cloud. What is a core subscription?



1           A.     So the core -- and I can't be a hundred  
2     percent here, but generally core licensing is either --  
3     is one of two things. A core is the label of a service  
4     offering or a core can be a processor or a  
5     licensed-based unit.

6           Q.     Okay. What is an add-on subscription? Do you  
7     know what that means in this context?

8           A.     Yeah. An add-on would be something that is  
9     not part of maybe the basis or the basic or, in my  
10    previous example, the core.

11           MS. LE: Okay. And if you go to the next  
12    page, Tracy -- wait. Did I get everything?

13           Q.     Yeah, go to the second page.

14           A.     Yup.

15           Q.     Did I cover -- did we cover everything there,  
16    Mr. Sgro?

17           A.     Yeah. These are more -- more of the same  
18    subscriptions, core and the desktop add-on, yup.

19           Q.     All right. And, sir, have you reviewed all of  
20    DigitalNet's invoices to United Way?

21           A.     I have reviewed what I believe is all of those  
22    invoices, yes.

23           MS. LE: Okay. And, Tracy, can you pull up  
24    Government's Exhibit 7?

25           Q.     And, sir, I'll represent to you that these are

1 hundreds of invoices that were obtained from the United  
2 Way through grand jury subpoena and provided to the  
3 defendant in pretrial discovery.

4 Does this comport with your recollection?

5 A. Yeah, that seems fair.

6 MS. LE: Okay. Tracy, can you go to Bates  
7 number page ending 01153, which is a bill for March to  
8 April of 2017.

9 DEPUTY CLERK UHRIN: Attorney Le, do you know  
10 which page of the PDF that is? Because there's 158  
11 pages, so if I have to flip through them, it might --

12 MS. LE: Oh, you can't search by Bates number?  
13 I thought you could search by the Bates number. That's  
14 how I pulled it up.

15 DEPUTY CLERK UHRIN: I'm using TrialPad and I  
16 can only jump to a page number.

17 MS. LE: Okay. Let me -- if you give me just  
18 a second, I can pull that up.

19 THE COURT: Maybe you can give her the page  
20 number from --

21 MS. LE: Yes.

22 THE COURT: -- correspondent to the Bates.

23 MS. LE: All right. That would be page 123.  
24 That should be invoice number 15053. Is that the right  
25 page? Let's see. Yup, that's the right page.

1 Q. Do you see it, sir?

2 A. I see it.

3 Q. All right. So this invoice is not very -- how  
4 should I say -- detailed, right?

5 A. I would agree with that.

6 Q. Okay. And here we see that United Way paid  
7 DigitalNet \$19,200 for infrastructure as a service and  
8 hosting.

9 A. Correct.

10 Q. Do you see that?

11 So do you know what additional services  
12 DigitalNet provided in this category on top of what  
13 DigitalNet -- I mean United Way paid Insight?

14 A. Are you -- I'm sorry. I don't understand.

15 Are you inferring that the infrastructure  
16 service hosting is directly related to the previous  
17 invoice we were talking about?

18 Q. Yes. So it's the same monthly invoice and  
19 this was part of Mr. Naviloff's analysis --

20 A. Uh-huh.

21 Q. -- is that right, because he compared kind  
22 of Insight's invoices to DigitalNet's invoices as it  
23 related to infrastructure as a service and hosting?

24 A. Uh-huh.

25 Q. And it's our understanding that Insight was

1 the hosting vendor, correct?

2 A. It's my understanding that they're -- yeah,  
3 that they could be one -- maybe one of many, but yes,  
4 the hosting vendor.

5 Q. But for this relevant time, which is  
6 November 2015 through July of 2018, Insight was the only  
7 cloud computing hosting service that had been  
8 identified. Are you aware of others?

9 A. I -- there the infrastructure is a service.  
10 I'm not sure if they are -- hosting is a completely  
11 separate kind of thing and so --

12 Q. Okay.

13 A. -- I'm not sure if the hosting is included in  
14 that. It would be very hard for me to draw a direct  
15 relationship between this line and only that other  
16 invoice.

17 Q. Okay. But is it -- but am I understanding  
18 correctly that Insight/OVH was an infrastructure as a  
19 service company?

20 A. Yeah, their infrastructure is a service. That  
21 would be correct.

22 Q. Okay.

23 A. Cloud -- any kind of cloud could be,  
24 presumably, put under the title of infrastructure as a  
25 service.

1           Q.     But you don't believe that they would qualify  
2 as the cloud hosting service?

3           A.     Well, it doesn't say cloud hosting. It says  
4 hosting.

5           Q.     A hosting service?

6           A.     Yeah. So hosting could mean quite a bit of --  
7 I mean, that's a very broad term. And, unfortunately,  
8 you're correct, there's not a lot of specificity in  
9 these invoices.

10          Q.     Okay. So are you aware of any additional  
11 infrastructure services that were provided on top of  
12 what OVH provided in March through April of 2017?

13          A.     Well, so to the degree that this is still a  
14 VMware environment we're talking about, right, if we  
15 follow your assumption that this infrastructure service  
16 is directly related to OVH, then the example I gave  
17 before about the VMware -- so VMware is a hosting  
18 solution. It does -- it does do the virtual desktop  
19 environment. And so the example that I gave about all  
20 of the infrastructure engineering, the ongoing  
21 engineering required to keep a service like that active  
22 would -- would be, you know, perhaps reflected here.

23          Q.     Perhaps reflected. Okay.

24          A.     Yeah. Yeah.

25          Q.     So you see that on-site IT support was billed

1 separately. Do you see that?

2 A. Yeah. On-site IT support, yeah.

3 Q. After-hours support is billed separately,  
4 right?

5 A. Yes, it is.

6 Q. What does virtual DAA services mean to you as  
7 an IT professional?

8 A. So that's -- that could be desktop as a  
9 service, that could be database as a service. I -- I  
10 assume in the context of this that is a desktop  
11 relation.

12 Q. Is that separate from the cloud?

13 A. Yeah, that would be separate -- yeah, that  
14 would be separate from the cloud.

15 Q. Okay. And applications, database, and OS  
16 management is also billed separately, right?

17 A. Yes, that's separately.

18 Q. Okay. So is it your position that there could  
19 be some additional services that just aren't kind of  
20 spelled out in this invoice, right?

21 A. Yeah. I mean, it's my position that -- I  
22 agree with you it's a little unfortunate that there's  
23 not more detail here, but --

24 Q. Yes.

25 A. -- there's some conclusions that we -- we just

1 can't draw without detail. And if we follow your logic,  
2 which, okay, let's -- let's do that for a moment,  
3 there's absolutely other services that would go into  
4 these services that would make the cost of the  
5 pass-through higher than what they paid from the vendor.

6 A value-added reseller takes a cost from their  
7 vendors and adds services to it and passes it through  
8 for a higher cost to the -- the end customer. That's --  
9 that's how that works.

10 Q. Okay. And so your client, as a CIO of United  
11 Way and as the principal for DigitalNet, would know the  
12 justification for that additional services that were not  
13 passed on, right?

14 A. I would assume, yes.

15 Q. Okay. And if they had records, if there were  
16 records of those additional services and those costs,  
17 DigitalNet should have those records, right?

18 MR. EATON: Objection, your Honor. I think  
19 we've been over this point to exhaustion. The point  
20 is -- that the government I believe is trying to make is  
21 that there's potentially some other records that may  
22 exist, but that's not what's at issue here. What's at  
23 issue here is the material that was not produced prior  
24 to trial and what would have impacted what was  
25 produced -- or what was put in to evidence at trial.

1           So to the extent the government is saying that  
2     there may be some other records, I think that point has  
3     been made and -- at the last hearing and now today.

4           Q.     Let's follow Mr. Eaton's comment and change  
5     gears a little bit.

6           In the posttrial discovery, have you located  
7     any additional records or communications that contradict  
8     Mr. Naviloff's assumptions in this regard about  
9     Insight/OVH and infrastructure as a service?

10          A.     I believe we've -- I've read things in the  
11     posttrial discovery that explained to me why his initial  
12     opinion is incorrect.

13          Q.     His initial opinion?

14          A.     Well, his opinion. I apologize. I misspoke.

15          Q.     But -- but isn't it more of the same things  
16     about his reliance on Ryan Gilpin reviewing materials,  
17     including invoices in this case, in this incident with  
18     respect to Insight/OVH?

19          A.     Well, in pretrial discovery we saw a lot of  
20     invoices and things of that nature which, I agree with  
21     you, Mr. Naviloff took into account in his financial  
22     analysis of this case.

23                 In posttrial discovery, we saw -- first of  
24     all, we learned about Ryan Gilpin, right, that's  
25     something, and his expertise and to what extent his



1 expertise or lack thereof -- and no offense to  
2 Mr. Gilpin -- is supported and went into Mr. Naviloff's  
3 analysis.

4 And so I think that that is -- that is the  
5 issue that I raised.

6 Q. Okay. But here in his expert report, in his  
7 testimony to the Court at trial, his analysis as it  
8 relates to Insight was exclusively dependent upon his  
9 review of invoices; isn't that true?

10 A. You see, I don't actually know that. And  
11 indulge me just for a second.

12 I believe he said that, yes, but I also see a  
13 lot of communications within the RSM staffers  
14 underpinning some of these ideas in a technical way,  
15 right? And so -- and incorrectly in a technical way.

16 But one of the things that I think is a  
17 question of mine, maybe not a statement of mine, is to  
18 what degree were those incorporated in that.

19 Oh, I lost the document. No. Sorry.

20 Q. That's okay. Let's move on to the concept of  
21 high availability backup after the transition from  
22 CloudConnect to OVH/Insight. Okay?

23 A. Okay.

24 Q. All right. So we're still on that same bill,  
25 right?

1 A. Yup.

2 Q. All right. You see there's a \$10,250 charge  
3 for data management and high availability backup,  
4 storage up to five terabytes; is --

5 A. Up to 15 terabytes.

6 Q. 15, oh.

7 A. Yes. I see that.

8 Q. That's much bigger, 15 terabytes.

9 Okay. And, on average -- I don't think that  
10 was consistent with the bills all around. I think it  
11 averaged about 9,500 to \$10,000 a month for that  
12 particular service; isn't that right?

13 A. That seems in the ballpark, yes.

14 Q. Okay. Do you know how DigitalNet provided  
15 high availability backup once they transitioned from  
16 CloudConnect to Insight for United Way?

17 A. I don't.

18 Q. Okay. But in a typical situation like when  
19 CloudConnect was involved, CloudConnect actually  
20 provided high availability backup according to their  
21 specifications and contract, right?

22 A. I believe that is correct.

23 Q. Okay. And it's my understanding that OVH did  
24 not provide high availability backup. Do you recall  
25 that testimony at trial?

1 A. Whose testimony was that?

2 Q. Mr. Meyer's.

3 A. I agree that Mr. Meyer spoke about high  
4 availability backups. However, he's not really  
5 qualified to analyze that.

6 Q. Okay. So do you remember his testimony?

7 A. I do recall it, yes.

8 Q. Okay. And do you remember that his testimony  
9 was based on two different things, right? Number one,  
10 he talked to OVH and they said they did not provide high  
11 availability backup, right?

12 A. He did say that at -- I believe that that is  
13 correct, yes.

14 Q. Okay. And, number two, he talked about an  
15 incident in August of 2018 when OVH/Insight experienced  
16 an outage. I think it had something to do with like a  
17 lightning strike or something. Do you recall that?

18 A. There was some kind of a power outage or  
19 something that he discussed, yes.

20 Q. Okay. And then as a result of that incident  
21 in August of 2018, United Way did not have cloud  
22 computing for several days; isn't that right?

23 A. I believe, yes. I believe that that is --  
24 there was an outage of the virtual desktop of the cloud  
25 computing environment during that time.

1 MS. LE: Tracy, can we pull up Exhibit 8?

2 Q. And, sir, Exhibit 8 is an internal email that  
3 Rich Voccio at United Way sent to his staff on August 7,  
4 2018. Do you see that?

5 A. I do see that.

6 Q. Okay. And correct me if I'm wrong, but I'm  
7 just going to read it into the record.

8 And I quote: You have been receiving updates  
9 from John Meyer. He and his team have been working  
10 around the clock on communications with our cloud  
11 vendor, VMware, on the outage issue. It is unfortunate  
12 that VMware does not have a redundancy cloud environment  
13 that could have avoided this service interruption. You  
14 have our -- and I'll stop there.

15 Did I read that correctly, sir?

16 A. Yes.

17 Q. Okay. And this is part of the testimony of  
18 Mr. Meyer and this relates to this incident you referred  
19 to, right?

20 A. Yup. And I do think, just for clarification  
21 for everyone, it's important to note that the cloud  
22 vendor is not VMware. I think he's --

23 Q. That was wrong?

24 A. Right. So VMware is the -- this is a  
25 nontechnical person talking about something technical.

1 Q. Yeah, of course.

2 A. But just for clarification, we're not talking  
3 about some other vendor that is VMware. That's a  
4 technology.

5 Q. And if we go back to the Insight contract, I  
6 mean invoices, we see references to VMware and things  
7 like that, right?

8 A. Yeah. That was the core technology they were  
9 provided.

10 Q. But we all know in this email in Exhibit 8  
11 they're talking about the issue at OVH in Virginia,  
12 right, or Washington, D.C.?

13 A. That is correct. In Virginia, yes, that's  
14 correct.

15 MS. LE: Okay. Tracy, can you pull up  
16 Exhibit 9 and go to page 9 of that document?

17 You'll see it when it starts being  
18 highlighted.

19 Can you keep going, Tracy?

20 I think we passed it up, Tracy.

21 DEPUTY CLERK UHRIN: I'm sorry, Attorney Le.  
22 I'm not sure what you're asking for.

23 MS. LE: Can you go back another -- up -- I  
24 don't think it's highlighted.

25 Q. All right. Sir, are you familiar with this

1 document?

2 A. Yes. Yes, I believe I am.

3 Q. Okay. And you know that we provided this to  
4 Mr. Harrington as well as current counsel?

5 A. Yes, I believe that there was a highlighted  
6 version of this, right. Yeah.

7 Q. And you remember that; I sent that to you?

8 A. I do.

9 Q. Or to counsel at least?

10 A. To counsel, yes, that's correct.

11 Q. Right. And what I highlighted was  
12 communications or at least information about a  
13 substantial power event on August 6, 2018?

14 A. Yes, that impacted the majority of their  
15 services, you know, essentially took the building  
16 down --

17 Q. Okay.

18 A. -- is what it looked like.

19 Q. Okay. So you understand that based on, you  
20 know, Mr. Meyer's conversation with a representative at  
21 OVH and then their experience of not having a high  
22 availability backup led him to conclude that there was,  
23 in fact, no high availability backup after Mr. Alrai  
24 transitioned the services from CloudConnect to  
25 Insight/OVH. Do you understand that?

1           A.     So I understand that, but I think there's an  
2     important piece of clarification here. All right?

3                 Computer systems, especially at a site level,  
4     you're talking about an entire building full of  
5     computers that essentially failed due to power. Right?  
6     Power's something that is absolutely required for  
7     computers.

8                 The presence of --

9           Q.     By computers, are we talking about OVH's  
10    computers?

11          A.     OVH's computers --

12          Q.     Okay.

13          A.     -- right, in their data center.

14                 The presence of a failure or not doesn't give  
15    us any indication of what services are provided.

16                 Now, what I mean by that is if you take the  
17    example of like Google or Amazon who have thousands and  
18    thousands of servers, right, and, you know, just give a  
19    number, whatever the number is in data centers around  
20    the world, they have outages and not because they don't  
21    have high availability data backups. In a lot of cases,  
22    an engineer will build high availability through  
23    redundant servers or through other third-party processes  
24    that provide those types of availability. However, a  
25    lot of times that's within the same data center.

1           And so -- and I actually talked about this  
2           during trial. We're confusing the idea of high  
3           availability with regional diversity. Regional  
4           diversity would have safeguarded against a building  
5           going down or a lot of systems in simultaneity going  
6           down because it would have been available maybe in  
7           another region or in another building.

8           However, it's very reasonable for high  
9           availability services to be built within the same  
10          facility if regional diversity is not specified, in  
11          which case there absolutely would have been high  
12          availability services that still failed and caused an  
13          outage of this size. That is very typical in the  
14          environment and that is very typical in the world.

15          I mean, just last week we saw the entire east  
16          coast of Amazon Web Services go down for a period of  
17          time, which was a very, very disruptive failure, and  
18          they absolutely have these types of services.

19          So I see what Mr. Naviloff did here -- and  
20          with respect to Mr. Naviloff, you know, I think his  
21          financial analysis, he looked at this without a  
22          technical lens and doesn't understand that the presence  
23          of a failure in no way indicates or clues us in to what  
24          was or was not provided.

25          Q.     Okay. Do you know where DigitalNet maintained



1     their high availability backup after the transition from  
2     CloudConnect to Insight?

3             A.     I don't. I only know that the presence of a  
4     failure doesn't indicate to me whether or not it was  
5     there.

6             Q.     Okay. But Mr. Meyer has talked to somebody at  
7     OVH and says OVH didn't offer it, right?

8             A.     Yeah. And OVH did not purport to offer it.  
9     That doesn't mean that DigitalNet didn't offer it.  
10    Right. Again, OVH is a sandbox. What you build within  
11    that sandbox is, you know, on you.

12            MS. LE: All right. Can we go back to  
13    Exhibit 3, Tracy, and go to page 12? You need to pull  
14    that up so I can see it.

15            Q.     Can you see it, sir?

16            A.     I can.

17            Q.     Okay. Under Hosting, do you see that?

18            A.     I do.

19            Q.     Okay. Geographically dispersed high  
20    availability environment.

21            A.     Uh-huh.

22            Q.     Okay. What does that mean to you?

23            A.     So geographically dispersed high availability  
24    environments would mean environments which were, you  
25    know, in a different geography. To what extent this is

1 talking about one service, I'm not sure.

2 Q. Okay. But in this contract, DigitalNet  
3 promised that they would back up the servers in a  
4 separate location than, say, CloudConnect's servers or  
5 separate from if OVH had backup servers; it would be in  
6 different physical locations, right?

7 A. I don't think that's what this says.

8 Q. Okay. So what does this say to you?

9 A. So this is just saying that some segment of  
10 the file web application or DB services would be  
11 geographically diverse from others.

12 Q. Okay.

13 A. It doesn't make any reference to whether or  
14 not the backups would be local or would be  
15 geographically diverse.

16 Q. Okay. So, sir, would it be reasonable to  
17 expect that DigitalNet would have records of which  
18 vendor it used to provide high availability backup from  
19 April 2016 through July of 2018?

20 A. If, in fact, they used a vendor and didn't  
21 provide that them -- themselves through building in  
22 these types of sandboxes, then it's possible they would  
23 have records.

24 Q. Okay. So are you aware whether your client  
25 and his company did, in fact, build in in this sandbox

1 that we've been talking about --

2 A. I was not -- I was not able to view these  
3 environments, so I can't speak definitively to what was  
4 built or not.

5 Q. Okay. So we've been talking about this  
6 invoice from March of 2017. Fair to say that RSM and  
7 Mr. Naviloff would not have been privy to that  
8 environment either?

9 A. As I said before, if there are environments  
10 that existed or were destroyed before RSM's ability to  
11 see them, then I would assume that they didn't see them  
12 unless they saw them through backups or something like  
13 that.

14 Q. Okay. Now, I'd like to change gears just a  
15 little bit with you and talk about market data. Do you  
16 remember that line of questions that Ms. Brown had with  
17 Mr. Naviloff?

18 A. About the cost of services?

19 Q. Market data comparisons, that kind of thing.

20 A. Vaguely, yes.

21 MS. LE: Well, it might help if I talk about  
22 the exhibit that she pulled up.

23 Tracy, can we pull up Exhibit Z?

24 DEPUTY CLERK UHRIN: Can you repeat that,  
25 Exhibit --

1 MS. LE: Z as in Zed or Zeus.

2 Yes, this is Z, right? All right.

3 Q. And this comes from the draft report that RSM  
4 prepared for United Way's board dated October 12th,  
5 2018; is that right, sir?

6 A. That appears to be correct.

7 Q. Okay. And that was about a year before trial,  
8 a little over a year before trial?

9 A. That's correct.

10 Q. And you'll agree with me that this  
11 presentation in Exhibit Z is different than what  
12 Mr. Naviloff prepared for the criminal trial?

13 A. I -- I mean, we could do a side-by-side  
14 comparison. Could you let me know which points you  
15 think are different?

16 Q. But you know they're different, right? We  
17 don't have to do a point-by-point --

18 A. Well, yeah, they're different documents. Yes.

19 Q. Right.

20 All right. Tracy, can we go to page 6 of  
21 Exhibit Z? And I'd like to talk about that last bullet  
22 point at the bottom, analysis of market data.

23 Mr. Sgro, could you just review that section?

24 A. Yes.

25 Q. So do you remember the line of questions that

1 Ms. Brown had for Mr. Naviloff about the existence of  
2 market data in this context?

3 A. Yes.

4 Q. And the context is that RSM identified vendors  
5 for third-party application development services, which  
6 I believe Mr. Naviloff explained meant website  
7 development, right?

8 A. I believe he explained it to mean that.

9 Q. Yeah. And you understand that website  
10 development was not part of the loss analysis conducted  
11 in the criminal case, right?

12 A. That's correct.

13 Q. Okay. Can you tell me in your understanding  
14 what market data or market analysis would look like?

15 A. Market analysis could be comparative quoting,  
16 it could be like services, it could be an analysis of  
17 what services would cost under certain circumstances  
18 that are similar or what those services would cost in  
19 other regions of the world, that sort of market  
20 analysis.

21 Q. So like -- like if I were to do some home  
22 improvement project at my house, I would call -- like  
23 say I wanted to get new plumbing and I wanted to call  
24 three different plumbers to get a range of prices to  
25 figure out, you know, the services, how much it's going

1 to cost, and make a decision about who I would hire,  
2 right, something like that?

3 A. That -- that could be a version of market  
4 analysis, yes.

5 Q. Right. So could one do a similar kind of  
6 analysis to calculate the value of services in this  
7 case?

8 A. Sure.

9 Q. But are you aware that Mr. Naviloff didn't do  
10 that with respect to the criminal case and loss?

11 A. I believe Mr. Naviloff did not do a market  
12 analysis.

13 Q. Okay. And you understand that to the extent  
14 that RSM looked at a market analysis comparison, it was  
15 for just the website, right?

16 A. I -- I don't understand that.

17 Q. Okay.

18 A. Could you -- could you come at me again with  
19 that?

20 Q. That last bullet point that we're looking at.

21 A. Yeah.

22 Q. Okay. So it looks like part of him did do  
23 some kind of market data comparison, right?

24 A. Yes.

25 Q. But that was for that, quote, third-party

1 application development, right?

2 A. I don't -- I can't correlate these two. I  
3 think this is -- this is a general statement in a slide  
4 deck and then there are various analyses that were done  
5 in other documents. To what extent they relate  
6 directly, I couldn't be sure.

7 MS. LE: Okay. Tracy, can we pull up Exhibit  
8 Bb; so big boy, little boy.

9 Q. All right. Are you familiar with this  
10 exhibit?

11 A. Yes, I am.

12 Q. I think the document shows up a bunch of times  
13 in all of our exhibits for today's hearing, right?

14 A. I think it does.

15 Q. And this is an email dated November 3, 2019,  
16 from Greg Naviloff to John Davis and Matt Hunter; is  
17 that right?

18 A. That's -- that's correct. Could we blow up  
19 the portion that you want to talk about? This is  
20 extremely small.

21 MS. LE: Sort of the very top, the header,  
22 Tracy, if you could highlight that for us.

23 A. Yes, that is correct.

24 Q. Okay. And there's a series of attachments.  
25 Do you see that?

1           A.     I see that there is.

2           MS. LE:   Okay.   And, Tracy, can you go to the  
3 bottom of the document where the Bates number is and  
4 highlight the Bates number?

5           Q.     Do you see the Bates number, sir?

6           A.     I do.

7           Q.     So that's 18R148\_RSM-02638; is that right?

8           A.     That is correct.

9           Q.     Okay.   And are you aware that this particular  
10 document was produced in pretrial discovery to  
11 Mr. Harrington in an email exchange?

12          A.     I -- I will take your word for that, yes.

13          Q.     Well, let's pull up Exhibit 21, which is that  
14 series of email exchanges.

15                 Okay, Tracy?

16                 All right.   Can you just scroll through  
17 briefly so -- just give Mr. Sgro a few minutes to look  
18 at each page or a few moments.

19          A.     Okay.   Yeah, I agree with you.

20                 MS. LE:   Okay.   Tracy, can we go to the first  
21 page and highlight the caption that's at the top.

22          Q.     All right.   And, sir, do you see this is an  
23 email from Mr. Harrington?

24          A.     That is correct.

25          Q.     It's dated November 7, 2019?



1 A. Uh-huh.

2 Q. And do you see the attachment --

3 A. I do.

4 Q. -- that he's sending?

5 A. I do.

6 Q. And it's a PDF of basically Exhibit Bb, right?

7 A. That is correct.

8 Q. Okay. So no question here that he got this  
9 stuff before trial?

10 A. No. Thank you for refreshing my memory.

11 Q. Of course.

12 Tracy, can we go to page 3 of Exhibit 21.

13 And do you see -- can we bring forward  
14 Mr. Hunter's response from November 7, 2019, at 1:47  
15 p.m.?

16 A. Yup.

17 Q. So you're familiar with this exchange --

18 A. Yes.

19 Q. -- between Mr. Harrington and the government's  
20 attorneys?

21 A. Uh-huh.

22 Q. And Mr. Harrington reviewed materials, it  
23 looks like, and then was asking for -- to make sure that  
24 he got all the records that were referred to in Exhibit  
25 Bb, right?

1           A.     Yes.   Tim says that we've provided -- or to --  
2   I don't know who's writing this.

3           Q.     That's Mr. Hunter.

4           A.     Mr. Hunter's saying that:  Tim, we've provided  
5   everything we've received from the United Way.

6                   So that's what they're talking about.

7           Q.     Okay.  And then he goes in and specifically  
8   cites by Bates number a particular item that  
9   Mr. Harrington had questions about, right?

10          A.     Yup.

11          Q.     Great.

12                   Tracy, can we go to page 4 at Exhibit 21,  
13   which is also defense Exhibit Bb and GGGG, right,  
14   Mr. Sgro?

15          A.     Yes.

16                   MS. LE:  Okay.  Can we go to the section that  
17   is -- subsection Dd.  Do you see that, Tracy?

18                   THE WITNESS:  It's about halfway down the  
19   page.

20                   MS. LE:  Yeah.

21                   DEPUTY CLERK UHRIN:  Yeah, it's too small on  
22   my screen as well.  Halfway?

23                   MS. LE:  It's too small.

24                   THE WITNESS:  Yeah, maybe just bring out a  
25   little bit above that.

1 MS. LE: Yeah, above that, Tracy, a little  
2 section --

3 THE WITNESS: It's basically the bullets in  
4 the top half, yeah.

5 MS. LE: Yeah. There we go.

6 Q. Can you see that, sir?

7 A. Just missed.

8 Q. Almost. That's a little better, right?

9 A. Yeah, that's a lot better. Thank you.

10 Q. Okay. So let me just summarize what  
11 subsection D says, which is Mr. Naviloff telling us in  
12 an email, right, that basically they may not have  
13 complete emails pertaining to all relevant DigitalNet  
14 communications. Is that right?

15 A. That's what it says, right.

16 Q. Okay. And that RSM relied upon Attorney  
17 Commisso and his team's e-discovery tools using keyword  
18 searches to find emails for their review.

19 Is that what he says there?

20 A. That is what he's saying there.

21 Q. Okay. And the bottom half of this email,  
22 there is a -- a chart, right, that goes on to the next  
23 page?

24 A. That's correct.

25 Q. Okay. And that is kind of a breakdown of the,

1 quote, potential relevant emails regarding the RFP  
2 process that they reviewed and relied upon as part of  
3 their loss analysis; isn't that right?

4 A. That appears to be true.

5 Q. Okay. And Mr. Naviloff identified the file  
6 name for each email; is that right?

7 A. That appears to be true, yes; generally the  
8 file name and a brief description, something like that.

9 MS. LE: Tracy, can you just highlight one  
10 part of the section below there, you know, where the  
11 green the -- the green is highlighted.

12 Q. Right, Mr. Sgro?

13 A. Yeah. You mean the -- I apologize. I'm  
14 color-blind. It's the darker part in the bottom of the  
15 table, yeah.

16 Q. Yeah. So -- and provided a summary of what  
17 each of those emails said, right?

18 A. Yeah. It's a breakdown of the -- I think just  
19 a summation --

20 Q. Okay.

21 A. -- yeah, and notes.

22 Q. And each of these emails were attached to --  
23 each of the emails referenced in the chart was attached  
24 to the email to the government, right?

25 A. It appears that, yeah, these are all the

1 attachments that are listed from above. To what degree  
2 they're comprehensive, I mean, we'd have to go through  
3 them, but I agree generally these are attached.

4 Q. Right. Well, do you want to do a comparison  
5 by file name right now?

6 A. I will take your word for it.

7 Q. I mean -- yeah. You don't have to take my  
8 word for it. It is what it is. The defense has pulled  
9 this as multiple exhibits, so I assume that you've seen  
10 this.

11 A. Yeah. If you're telling me that they're all  
12 there, then I believe you.

13 Q. And each of the emails that are referred to in  
14 this chart were produced in pretrial discovery, right?

15 A. So this whole email exchange would have been  
16 pretrial, yes.

17 Q. Right.

18 A. Yes.

19 Q. So this is one of the topic of emails. Can we  
20 talk about a part of your supplemental expert report,  
21 which I believe is Exhibit Kk; is that right, sir? Is  
22 that Exhibit Kk?

23 MR. EATON: That's right, Cam.

24 MS. LE: All right. Thank you very much,  
25 Michael.

1                   And can we go to page 7 of Kk?

2           Q.     And what I'd like to talk about is paragraph  
3 23D-three little Is. I don't know how one speaks that.  
4 It's about key communications from email accounts.

5                   Do you see that?

6           A.     That's correct.

7           Q.     Okay. Would you just read your assessment  
8 right there?

9           A.     Sure. The inability to review key  
10 communications from email accounts, including a  
11 comprehensive production of all emails sent by Mr. Alrai  
12 and the IT service desk environment, because they were  
13 not provided to defense counsel and were not made  
14 available for me to -- to me for analysis.

15                   I recall from Mr. Meyer's trial testimony that  
16 he, in fact, did -- that he, I apologize, in fact, did  
17 preserve these environments.

18           Q.     Okay. So do you understand that RSM did not  
19 review all the email messages exchanged between  
20 Mr. Alrai and the IT service desk?

21           A.     I don't know what RSM reviewed or didn't  
22 review.

23           Q.     Okay. But fair to say that review of the  
24 emails exchanged between Alrai and the IT service desk  
25 were not part of Mr. Naviloff's loss calculation, at

1     least you didn't see that in any of his reports or  
2     summaries, right?

3           A.     I don't see that in his reports or summaries.  
4     I think that would have been valuable.

5           Q.     Okay. But -- but it wasn't included in his  
6     calculation that was presented, right?

7           A.     I haven't read anything to suggest that it  
8     was.

9           Q.     Okay. And is it your testimony that review of  
10    all of the email messages exchanged between Mr. Alrai  
11    and the IT service desk is required to evaluate the IT  
12    services that DigitalNet provided over six years?

13          A.     So just -- just to clarify here, I mean,  
14    emails sent by Mr. Alrai and the IT service desk  
15    environment, right, as two separate things, not  
16    necessarily communications between the two.

17          Q.     Okay.

18          A.     And so -- so there's a lot of ways of  
19    analyzing an environment, right? And, again, nothing's  
20    ever, you know, perfect if you're not standing in front  
21    of the environment, looking at it as an expert. In that  
22    case, you get very detailed information.

23          Q.     Right.

24          A.     When the environments aren't there to analyze,  
25    one of the things we rely heavily on are email

1 communications from key stakeholders, right, Mr. Alrai,  
2 of course, being one of those, where we would be able to  
3 talk about services -- he would be talking about  
4 services with his peers, with other technology people in  
5 his organization.

6 The other place that we would look for  
7 information about these services delivered would be in  
8 the IT service desk, right? That is the place where --

9 Q. I'm sorry. That's my --

10 A. -- oh, no worries --

11 Q. -- that's my dog.

12 A. -- where -- where there would be tickets or  
13 service outages, ongoing engineering work. The issue  
14 here is we're talking about millions of dollars' worth  
15 of services and there's generally communication about  
16 that in those types of environments.

17 And so one of the things that I would like --  
18 would have liked to review would be a comprehensive list  
19 of those emails and the help desk environment in order  
20 to establish what is relevant and what is not to  
21 allowing us to understand what happened within these  
22 environments or when these environments were deployed  
23 and how.

24 Q. So, sir, have you ever determined the value of  
25 IT services by reviewing email messages in another



1 matter over such a large period of six years?

2 A. It's part of how we evaluate services, right?  
3 So if you're looking for doing an evaluation of the cost  
4 of services or the value of services, we have to  
5 understand exactly what those services were.

6 And this is part of the vagueness of the  
7 information that Mr. Naviloff and I have to look at. We  
8 have to look at some of these services. And so this is  
9 some of the ways that we would have gained insight into  
10 those services and been able to color our analysis of  
11 that.

12 Q. Okay. Sir, but you said that -- it sounds  
13 like it's part of your work in the past, so can you give  
14 me a specific example of when you have reviewed all  
15 email communications or email communications of the  
16 magnitude that you're suggesting in a --- in a similar  
17 kind of case?

18 A. So I can give you examples of when -- and when  
19 we say reviewed, we don't mean I'm going to read every  
20 single email, right? So it's not an arduous effort,  
21 right? We use, you know, not only keyword searches --  
22 keyword searches is one of them. In the past I have  
23 used searches between two people, right? So all  
24 communications between one person and another person,  
25 say, a CIO and a CEO.

1 I've also used reviews and organization of  
2 help desk tickets in order to understand the  
3 comprehensive nature and maybe the quality of services  
4 that are rendered by an organization.

5 Q. Okay. But going back to Exhibit Bb --

6 A. Uh-huh.

7 Q. -- and that chart that we talked about --  
8 Tracy, can you pull back Bb again?

9 And, again, in this email that was relayed to  
10 you and to counsel pretrial, it is clear that -- you  
11 know, it appears that RSM did that; they did it through  
12 asking Mr. Commisso to use his e-discovery tools to  
13 search for relevant information and they pulled what  
14 they thought were relevant and they included that --  
15 those emails that they thought were relevant to their  
16 analysis. Isn't that fair to say, that that's what they  
17 did?

18 A. So there's this -- this pertains primarily to  
19 the RFP process, right?

20 Q. RFP process, yes.

21 A. Right. So to what degree they did that for  
22 the totality of what we would have asked for, I don't  
23 know. I do know that a nontechnical expert providing  
24 those key searches or performing that, you -- you have  
25 maybe ten emails here, right, over a great deal of time.

1 I imagine, and I am speculating, that if I -- if I were  
2 to run my own search on the totality of Mr. Alrai's  
3 emails, I might come up with something that is relevant.

4 Q. And, actually, I recall there was a -- I don't  
5 think I was directly involved, but I recall that you,  
6 with Mr. Harrington, proposed pages of search terms that  
7 could have been run through the e-discovery platform  
8 that Mr. Commisso had set up, right? There was some  
9 litigation about that.

10 A. I do recall there was conversation about that.

11 Q. Okay. And then -- and I'm sure Ms. Brown will  
12 cover this with Mr. Commisso when he testifies, but it  
13 was his testimony that that would have caused a  
14 significant amount of money and taken a significant  
15 amount of time to run the queries that you suggested  
16 over the -- the emails that were preserved by Mr. Meyer,  
17 right?

18 A. I believe that their case was that it was too  
19 burdensome to look through the emails for the  
20 information that I requested.

21 Q. Okay. And you were talking about the IT help  
22 desk environment. What does that mean to you, IT  
23 service desk environment?

24 A. Yeah. So service desk and help desk, it's an  
25 iteration of terms. We used to call them help desks.

1 Now we call them service desks. That's essentially the  
2 ticketing system where end users, any employee, would  
3 maybe submit a ticket or a help request in to the IT  
4 organization.

5 And why that's important is that generally  
6 those aren't just tickets that would be handled by one  
7 or two people. They would be escalated throughout the  
8 IT organization and through contractors in order to  
9 resolve issues. That would give us critical insights  
10 into the types, qualities, and the engineering work on  
11 the services that were provided.

12 Q. So would one expect that like because  
13 DigitalNet had embedded employees at United Way that the  
14 computers they use, the other devices they use, would be  
15 part of this IT environment?

16 A. So -- I'm trying to understand your question.  
17 I -- I think what you're asking is would issues with  
18 those equipments be reflected in the service desk; is  
19 that what you're asking me?

20 Q. Sir, I guess my question is -- let me break it  
21 down.

22 A. Sure.

23 Q. You know that DigitalNet had two embedded  
24 employees at United Way, right?

25 A. I do.

1 Q. And those were the IT help desk folks, right?

2 A. That is correct.

3 Q. Okay. And they had computers, right?

4 A. Correct.

5 Q. And they had phones, right?

6 A. That's correct.

7 Q. And possibly other devices that they used to  
8 do their work at United Way as DigitalNet employees,  
9 right?

10 A. That is correct.

11 MS. LE: I'm going to pause for a moment  
12 because my dog is about to bark at some folks. Just one  
13 second.

14 Thank you. So sorry about that.

15 All right.

16 THE COURT: No problem.

17 Q. So when you talk about the help desk service  
18 in an IT service desk environment, are you referring to  
19 those folks?

20 A. No.

21 Q. No?

22 A. No.

23 Q. Would it include those individuals?

24 A. So those people work -- part of their function  
25 is to take tickets and issues out of the service desk

1 environment and work on them. Yes, I would agree with  
2 that.

3 Q. So if they -- if there were tickets for work  
4 to be done, would they not receive those tickets through  
5 their computers and other devices?

6 A. Typically, no. So the way a service desk  
7 software typically works, you log in to like a website  
8 or a portal and all of that is there.

9 So I agree that they would have used those  
10 computers' browsers, like Internet Explorer or Chrome or  
11 Firefox, in order to access those tickets, but those  
12 types of tickets would not exist on their personal  
13 devices or their computers directly.

14 Q. Okay. But if, say, an employee at United Way  
15 had an issue and they wanted to communicate those issues  
16 with the IT service desk, one of the ways they did that  
17 was through emails; isn't that fair?

18 A. I assume to some degree people would send  
19 emails with problems. That's fairly typical. But that  
20 would be a speculation. Generally an organization of  
21 that size has an actual service desk where you put in a  
22 ticket and that's how the official communication works.

23 Q. Okay. So do you have any specific information  
24 about how DigitalNet set up the IT service desk for  
25 United Way?

1           A.     I don't.

2           Q.     Okay.  So, sir, we were talking about IT  
3     service environments and I just made the assumption, of  
4     course, you know, being a layperson, that that  
5     information would be on the devices used by the help  
6     desk folks, DigitalNet's employees, right?

7           A.     Not typically, but I understand how you made  
8     the assumption.

9           Q.     Sure.  Sure.  And we don't really know here  
10    one way or the other how DigitalNet set up the help desk  
11    environment for United Way, right?

12          A.     Yeah, I've not been able to analyze that  
13    environment and that -- those tickets or none of that  
14    information has been provided to me to analyze.

15          Q.     Okay.  And you understand that neither did  
16    Mr. Naviloff or anyone at RSM?

17          A.     I don't know what RSM did.  I know that  
18    Mr. Naviloff does not cite the IT service environment in  
19    his opinion.

20          Q.     Right.  And in terms of like the help desk  
21    area, they assume that services were provided and did  
22    not include that in their loss calculation, right?

23          A.     That's tricky, right, because I agree with you  
24    that the cost of the people that work on the service  
25    desk environment, right, that activity, to what degree

1 that they're serving just the basic service desk  
2 function was not -- was not analyzed as part of  
3 Mr. Naviloff's opinion.

4           However, it's likely that higher level  
5 engineering tasks would have passed through the  
6 service -- the service desk environment and been  
7 escalated to engineers to resolve VMware, for instance,  
8 related issues.

9           So those would be there but, again, we don't  
10 know because I haven't been able to analyze it.

11           Q.    Okay. And, sir, are you aware that -- that  
12 United Way conducted a -- or had another company conduct  
13 a forensic imaging of various computers and phones used  
14 by DigitalNet's employees?

15           A.    I believe, yes, that they did.

16           Q.    Okay. And among those devices was Mr. Imran  
17 Alrai's Dell laptop. Are you aware of that?

18           A.    I am aware of that, yes.

19           Q.    Okay. So if one assumed that he used that  
20 laptop to communicate with the IT service environment  
21 and the other stakeholders at United Way, it may be --  
22 those emails may be on that device?

23           A.    Again, typically emails, especially kind of in  
24 this day and age, don't necessarily reside directly on a  
25 device. In a lot of cases, especially for executives,



1 that's prohibited due to security reasons, so you're  
2 viewing them more through a web portal for only a  
3 specific time period. It's also very typical for  
4 laptops like that to only contain one or two weeks'  
5 worth of emails.

6 Q. Okay.

7 A. So that's what I would expect from that. I do  
8 agree with you that it's possible he used that laptop to  
9 communicate with stakeholders at the United Way.

10 Q. And are you aware that the government produced  
11 a two-terabyte hard drive with forensic images of  
12 various computers and other devices during pretrial  
13 discovery?

14 A. Yes. And I believe, if recollection serves,  
15 that those were cell phones -- cell phone images and  
16 desktop images primarily of the people that -- the  
17 computers of the people working in the service desk  
18 environment and Mr. Alrai.

19 Q. Okay. And you recall the testimony from  
20 the FBI forensic expert about things that they -- he  
21 recovered from Mr. Alrai's computer, right?

22 A. I actually was not present for the FBI  
23 expertise -- testimony.

24 Q. But you're aware that there was an FBI  
25 forensic expert who testified about information obtained

1 from Mr. Alrai's computer?

2 A. I -- I am aware that there was an FBI expert  
3 that was questioned as part of this case.

4 Q. Okay. And you -- did you review that  
5 two-terabyte hard drive?

6 A. I did.

7 Q. Okay. And did you search it for any relevant  
8 email?

9 A. I did.

10 Q. Okay. Did you prepare a report of your  
11 findings, if any?

12 A. No. So when -- by the -- when we were  
13 provided that hard drive -- and, forgive me, it was a  
14 year ago -- I believe that was actually very close to  
15 trial, so we did a cursory review to see if there were,  
16 in fact, any significant email findings or communication  
17 findings on those, including service desk tickets and  
18 things of that like. And we did not find any so that we  
19 did not report on them.

20 Q. Okay. All right. So if it wasn't relevant,  
21 you didn't include them in a report in any way. You  
22 looked for them, you put -- you didn't write them down  
23 in a report?

24 A. The information that I requested wasn't  
25 actually on there, so we did not use it as part of our

1 analysis.

2 MS. LE: Okay. Tracy, can we move on to  
3 Exhibit 1a and go to page 8 of that exhibit.

4 Q. We talked about this one earlier, right, this  
5 exhibit, generally?

6 A. Yes.

7 Q. Okay.

8 A. I mean, in general terms, the zip.us pricing  
9 and markup, yes.

10 MS. LE: Okay. I think we're on the wrong  
11 page here.

12 I would like to -- I think I counted out what  
13 the pages were and they might not be the right page.

14 Judge, can we take just a quick minute? I  
15 need a water break and then I can pull up the right  
16 page. Would that be okay?

17 THE COURT: We're at -- we're literally at  
18 90 minutes right now anyway, so it's a perfect time to  
19 take a break. So let's take the morning recess.

20 I have a question, though, I wanted to pose.

21 No, I'll do it later. Let's take the  
22 15-minute break. We are in recess.

23 MS. LE: Thank you, Judge.

24 (Recess taken from 10:41 a.m. until 10:59 a.m.)

25 THE COURT: Sorry about that. I was on a

1 phone call. Okay. I'm ready to go.

2 MS. LE: Judge, do you want us to pick up or  
3 did you want to address something?

4 THE COURT: I'm not getting AUSA Le's voice.

5 MS. LE: Judge, can you hear me?

6 THE COURT: Now I can.

7 MS. LE: Okay.

8 All right. Tracy, I'd like to pull up  
9 Exhibit 1b, as in boy, and page 8 of that exhibit,  
10 please.

11 Q. Mr. Sgro, can you see bullet point number 4?

12 A. The one that starts with "we collected  
13 laptops"?

14 Q. Yes, sir.

15 A. Yes, I can.

16 Q. All right. And there's a reference -- after  
17 email records, there's a footnote. Do you see that?

18 A. The "see appendices" or "per discussions"?

19 Q. Footnote. Does it say footnote there after  
20 the number one about email records for key United Way  
21 personnel? Do you see that?

22 A. Yes. The one that says "per discussions with  
23 UWMV, email service was migrated from Outlook Exchange  
24 to Google in or around March 2015"?

25 Q. Yeah. Why don't you read that full footnote.

1           A.     The decommissioned -- it continues to say:  
2     The decommissioned Microsoft Outlook Exchange server has  
3     not been located to date.  Therefore, if emails were not  
4     migrated or were subsequently deleted from the Goggle  
5     platform, we have no record of and, thus, could not  
6     review such emails.

7           Q.     Okay.  So based on that footnote, it's fair to  
8     say that this migration in March of 2015 from Outlook to  
9     Gmail likely limited RSM's ability to pull even more  
10    emails, right, that are relevant for the purposes of the  
11    analysis?

12          A.     So I'm confused by that, only because -- and  
13    as I learned at trial through the testimony of  
14    Mr. Meyer, he actually preserved all of Mr. Alrai's  
15    emails in the conversion from Google to Microsoft or  
16    Microsoft Exchange in the Google transition.  So to what  
17    degree those were actually preserved, I'm not sure why  
18    they wouldn't be available.

19          Q.     I think the confusion for you might be from  
20    two different migrations.  Okay?  So let me talk about  
21    this first migration; that in March of 2015, your client  
22    migrated United Way's emails from Microsoft to Google  
23    and --

24          A.     Right.

25          Q.     -- Mr. Meyer later testified that he

1 transitioned it back from Google to Microsoft.

2 Does that make sense?

3 A. Yes, that's -- that's good clarification.

4 Yes. Thank you.

5 Q. Okay. I mean, you know, it's a year ago now,  
6 right?

7 A. Doing my best.

8 Q. So let's talk about the March 2015 email  
9 migration from Microsoft to Gmail that was done under  
10 your client's direction and control. Okay?

11 A. Okay.

12 Q. Okay. So at least as related to emails that  
13 existed at that time, the fact that RSM was unable to  
14 locate the decommissioned Outlook Exchange limited their  
15 ability to search for and locate even more emails; would  
16 that be fair to say?

17 A. That seems fair. If something is deleted or  
18 missing, it's hard to find.

19 Q. Okay. And Mr. Alrai would have been the one  
20 responsible in 2015 to make sure to preserve or not  
21 preserve any relevant email in that migration, right?

22 A. Presumably his organization would have been  
23 responsible for that migration. I'm not aware who  
24 actually performed that migration specifically.

25 Q. Okay. When you say his organization, do you

1 mean United Way or do you mean DigitalNet?

2 A. I mean, ultimately I think that would have  
3 been responsible -- the responsibility of the United Way  
4 to make sure that data is preserved and whatnot.

5 Q. Okay. And that person at United Way that  
6 would make sure it would be preserved would be the head  
7 of the IT department, right?

8 A. Yeah, that seems reasonable.

9 Q. Okay. Sir, are you aware that DigitalNet and  
10 its employees, including Mr. Alrai, had separate  
11 DigitalNet email accounts?

12 A. I think it's a fair assumption that DigitalNet  
13 employees may have DigitalNet emails.

14 MS. LE: Okay. Tracy, can we pull up  
15 Exhibit 13? Can you go to the header at the very top?

16 Q. So, sir, this is a series of emails that were  
17 exchanged on September 3rd, 2014, and I'll represent to  
18 you were produced in pretrial discovery. Okay?

19 A. Okay.

20 Q. And do you see at the top the name of the  
21 sender and the sender's email address?

22 A. Yup. That's Kal, and it's Kal Wahbe -- I  
23 apologize if I'm spelling that -- saying that wrong --  
24 @DigitalNet.com.

25 Q. And do you see who the recipients of that

1 email were?

2 A. So the IT service desk is a recipient at  
3 supportunitedway.org; Imran Alrai@digital --  
4 digitalnet.com.

5 Q. Have you reviewed other DigitalNet email?

6 A. Emails specifically from DigitalNet?

7 Q. Yes, like the -- at these -- the name of the  
8 employee at DigitalNet.com.

9 A. I'm not sure if they are from DigitalNet or  
10 United Way email addresses. There's certainly a lot of  
11 emails.

12 Q. Okay. But separate and apart from what the  
13 government produced to you in discovery, have you ever  
14 asked your client to provide DigitalNet emails showing  
15 the services they provided to United Way?

16 A. So --

17 MR. EATON: Objection, same as -- same as  
18 before. I think this is -- it misses the point and to  
19 the extent the point is relevant, it's been made.

20 THE COURT: Overruled.

21 Q. You may answer the question. Do you want me  
22 to rephrase it, sir?

23 A. So I -- I was retained to analyze the data  
24 provided to me by counsel and I did not receive as part  
25 of my analysis a direct -- you know, a storage of emails



1 from DigitalNet.

2 Q. Okay. So we know now that this is an example  
3 that DigitalNet had emails and it was used between  
4 DigitalNet's employees to communicate, right?

5 A. Seems fair, yes.

6 Q. And the subject of this email is GP, meaning  
7 Great Plains, crashing, right?

8 A. That appears to be correct, yes.

9 Q. Okay. And I think one of the things that you  
10 talked about earlier is that, you know, what the help  
11 desk folks do at United Way doesn't necessarily  
12 correspond to the added value services that the  
13 engineers would have to perform, right?

14 A. In certain cases that would be correct, yes.

15 Q. Okay. And would it be a fair assumption that  
16 if there were value-added services that were required of  
17 DigitalNet's engineers, maybe they're in Pakistan or  
18 somewhere else, that that kind of exchange would be  
19 documented in any way in DigitalNet's email?

20 A. It could be possible that there are  
21 communications about ongoing services between DigitalNet  
22 engineers.

23 Q. Okay. And like how you would have liked to  
24 have reviewed emails between Mr. Alrai and other  
25 stakeholders to determine what, if any, services were

1 provided and the value of those services, likewise, it  
2 would have been beneficial to you to review DigitalNet's  
3 internal emails in the same regard, right?

4 A. Communications, no matter who they're from,  
5 revolving around a service, especially of a technical  
6 nature, are generally valuable in an analysis.

7 Q. Okay. And would it be fair to say that United  
8 Way wouldn't necessarily have access to DigitalNet's  
9 internal emails, right?

10 A. I don't know why they would.

11 Q. Right. And based on your review of the  
12 posttrial discovery, do you have any evidence that RSM  
13 had access to any other additional DigitalNet internal  
14 emails that were not produced in discovery?

15 A. I did not read in posttrial discovery of any  
16 indication that RSM has access to DigitalNet's email  
17 servers.

18 Q. Okay. So I want to switch gears again,  
19 talking about this terminology that's come up a fair bit  
20 in the litigation since trial. It's about this concept  
21 of the IT environment. Okay, sir?

22 And this is going to be one of those things  
23 that I'm going to need you as the expert to explain to  
24 me as a layperson. What does an IT environment and the  
25 forensic review of that environment entail?

1           A.     That's the --

2           Q.     Go ahead.

3           A.     -- question?

4           Q.     Yes.

5           A.     Oh, okay.

6                     So an IT environment would be networks,  
7 computers, servers, desktops, any -- pretty much  
8 anything that's connected -- that is, a computer or  
9 like -- telephony equipment. All of that would be, you  
10 know, part of the IT environment and that would include  
11 cloud or data backup repositories. That could include  
12 everything, anything that's plugged into the network or  
13 is used in a computing fashion.

14          Q.     Okay. Does it mean that you look at each  
15 computer that's part of the network, each phone that's  
16 part of the network?

17          A.     So there's -- there's levels that you analyze  
18 an IT environment. Right? Generally you don't analyze  
19 every single phone. If they are alike, then you analyze  
20 one and you make some assumption -- reasonable  
21 assumptions about the others.

22                    In the case of desktop computers, especially  
23 in a virtual desktop environment, you can look at the  
24 specific image that's deployed to many systems and have  
25 a general understanding of what's there for the

1 remainder of those systems.

2           So it's not necessarily that you have to look  
3 at every single environment, but generally we look at  
4 the totality of the environment and then narrow in about  
5 what's reasonable and which parts of it will shed light  
6 on other parts.

7           So in cases where there's redundancy or things  
8 are very similar, significantly similar, we don't  
9 individually analyze all of it.

10          Q.    Okay.  So you don't need to look at hundreds  
11 of computers or every single server or every single  
12 phone; is that right?

13          A.    So phones and computers are kind of in a  
14 separate category.  You know, if it's one model of phone  
15 and the phone is connected to the same phone system  
16 then, no, I wouldn't think it was reasonable to look at  
17 every single one.  And the same in a virtual desktop  
18 environment would be true of those computers, where we  
19 wouldn't look at every single computer.

20               Servers are a little bit different because  
21 generally a server has a specific function and those  
22 functions, the applications that they run, are  
23 different.  So we would spend special attention on the  
24 server environment because there's a like -- higher  
25 likelihood for differences there.  And so we would have

1 to go through those, not necessarily one by one in all  
2 cases, but in a lot of cases, we would look at most of  
3 them.

4 Q. So would you say for a computer have a  
5 forensic image of that device?

6 A. A desktop computer?

7 Q. Yeah.

8 A. Yeah, so it depends on who the person is,  
9 right? If there was -- if they were an executive and  
10 they had, you know, direct involvement or they were an  
11 engineer, that may have certain value, but the general  
12 staff of the United Way, we wouldn't necessarily take  
13 forensic images of every single computer, no.

14 And, remember, this is a -- this is -- to a  
15 large degree, this is a virtual desktop environment, so  
16 the computers and the software they're running are  
17 actually in the cloud, not on the computer in a  
18 traditional sense. And so there wouldn't be a lot of  
19 value in reimaging a bunch of computers that are -- that  
20 are using the same cloud. We would look at imaging the  
21 cloud itself at that time.

22 Q. Okay. And so I -- and correct me if I'm  
23 wrong, but like the cloud environment, that isn't a  
24 static thing, right? That's a dynamic kind of  
25 situation, isn't it?

1           A.     Certain parts of it are static. You know,  
2     there's -- there's certainly the infrastructure that  
3     it's running on. It's virtual in that it's primarily  
4     made up of software that is running on some hardware  
5     that's kind of obscured from the end user, right?

6                 So it's -- the cloud looks like you're using a  
7     software application more than like you're using a  
8     traditional brick and mortar, kind of bare-bones  
9     computer that was metal and a chassis and all that.

10                However, certain parts of it are dynamic. So  
11    logging, network traffic, that sort of thing, those do  
12    change over time. But the general images and some of  
13    the setup is static to a certain degree.

14           Q.     What about when DigitalNet is called upon to  
15    do these engineering products or engineering events to  
16    address whatever issue, is that -- would that change the  
17    cloud environment?

18           A.     It wouldn't change the cloud environment. It  
19    would -- if they were applying maybe security patching  
20    or something like that, it would change the image that  
21    the people are booting from, right, the software that  
22    they are using. Certainly if they did software  
23    maintenance, that would change the software, but not the  
24    totality of the cloud environment itself. The container  
25    would stay roughly the same unless they were adjusting

1     that as part of the maintenance.

2             For instance, if something was running out of  
3     memory or they needed to adjust it, the cloud  
4     environment would look slightly different as a result of  
5     that, but in general, you know, there would be changes  
6     if the engineers were making changes.

7             Q.     So I guess one of the things I have a hard  
8     part -- hard time wrapping my head around is even if you  
9     could get access to the cloud for all these computers,  
10    for all these servers and all these phones, wouldn't you  
11    be just limited to, for the most part, a rather narrow  
12    window of time versus like a period of like six years  
13    that we are talking about here as a loss analysis?

14            A.     So I think I understand your question now.  
15    Let me kind of attempt.

16            Forensic imaging is always a point in time  
17    snapshot. Right? Computer systems vary from day to day  
18    no matter what. I mean, certain files do change just on  
19    an ongoing basis. And so from that perspective, any  
20    kind of forensic image will only give you the exact  
21    snapshot of what it was at that -- the moment that the  
22    snapshot is taken.

23            And that said, generally these cloud  
24    environments persist with a reasonable amount of  
25    standardization throughout their life. They don't

1 dramatically change to the point where an image from  
2 today would be completely invalid a year ago. Certainly  
3 if you had images every year and looked at those, you  
4 know, say, like a year-end backup, most companies do  
5 take backups of their environments on a routine basis.  
6 So if you were to line all of those backups up, you  
7 would see changes for sure.

8 Q. So that would assume that whoever's in charge  
9 saved the backups and that that is something that can be  
10 pulled relatively easily so that one can do a comparison  
11 from one point to another, though, right?

12 A. Yeah. So in cloud environments, we're very  
13 fortunate, right? We live in an era of cloud computing  
14 where backups are actually quite easy. And so big  
15 environments can be backed up as a single file which is  
16 fairly mobile and portable to be made available for  
17 recovery and things like that. So that's -- that's more  
18 a function of the time that we live in, which is nice.

19 And, but, yeah, of course, if the backups  
20 aren't made or the backups aren't stored, then you can't  
21 analyze something that doesn't exist.

22 Q. Right. So we can't go back, if it wasn't  
23 preserved in 2015, to see what the environment was in  
24 2015, right?

25 A. You certainly cannot analyze something that



1 doesn't exist.

2 Q. And same for 2016; if it wasn't preserved in  
3 2016, it's not possible to go back to review that,  
4 right?

5 A. Yeah. It's not possible to go back in time  
6 and take a backup that you didn't take. I presume  
7 you're suggesting that there are no backups; that the  
8 United Way doesn't have backups of any kind?

9 Q. Well, are you aware of any backups from 2015,  
10 2016, or any other backups --

11 A. No. So I haven't been allowed --

12 Q. -- by comparison that you're talking about?

13 A. So I haven't been allowed to review any of the  
14 environments, so I couldn't tell you definitively if  
15 there are or are not backups.

16 Q. And we can all agree that Mr. Naviloff also  
17 didn't review this IT environment either and that's part  
18 of the issue that you have with his review, that he  
19 wasn't technically qualified to do that kind of  
20 analysis; right?

21 A. There's two answers to that. The first is  
22 that I don't believe that Mr. Naviloff reviewed that  
23 environment. Surely that's outside the scope of his  
24 expertise.

25 However, it does appear to me that RSM had

1 access to that environment, at least as it stands  
2 pretrial.

3 Q. Okay. So do you remember Mr. Naviloff's  
4 testimony in this regard about his access to the -- the  
5 servers and -- which I assume is his -- his discussion  
6 about the IT environment? Do you remember that?

7 A. I believe he said something to the effect of  
8 he didn't take that into account or didn't utilize that  
9 in the formation of his opinion.

10 Q. Right. And the fact that he and his team that  
11 were conducting the loss analysis didn't have access  
12 because there was a -- kind of a wall that was created  
13 between his group and what they were hired for and  
14 another group within RSM; isn't that right?

15 A. I can't speak to the internal structure at  
16 RSM, but I do know that various people at RSM were --  
17 were permitted to enter the environment to some degree  
18 or were given direct information from the environments.

19 Q. Okay. That was not part of his loss  
20 calculation, right?

21 A. According to him, he did not use that as part  
22 of his loss calculation.

23 Q. Okay. And did you see evidence of him  
24 reviewing or that you referenced to the -- the IT  
25 environment as you understand it in his expert report or

1 any of the other materials that were submitted in  
2 support of his conclusions?

3 A. I don't quite understand the question.

4 Q. So, I mean, you seem to question whether his  
5 testimony was accurate or not.

6 Do you see any proof in the pretrial or  
7 posttrial discovery that suggest that Mr. Naviloff and  
8 the team that was working on the loss analysis had  
9 access to the, quote, IT environment as a whole?

10 A. I see in the posttrial discovery conversations  
11 about Mr. Naviloff and his team discussing access to  
12 that exact -- that environment.

13 To what degree -- I know he's aware of it and  
14 I know that, you know, he was involved in those  
15 conversations. To what degree he's included that in his  
16 analysis, I can't speak to.

17 Q. Okay. So let's talk about -- one minute.

18 So have you been called upon in other matters  
19 to kind of conduct this evaluation of an IT environment  
20 to evaluate loss in a fraud case?

21 A. No. So I don't deal with fraud. I mean,  
22 that's definitely the -- establishment of fraud is  
23 definitely beyond the scope of my practice, but I have  
24 helped clients evaluate IT environments for services  
25 that -- the quality of services that were provided by a

1 third party.

2 Q. Okay. So kind of like what TBS did when they  
3 came in after Mr. Alrai was terminated, trying to figure  
4 out what was going on and what they needed to do to  
5 transition services and/or approve them, like that?

6 A. With one important difference. So similar,  
7 but one important difference.

8 TBS did this as -- not as an independent third  
9 party. This -- I would do that generally as an  
10 independent third party looking objectively at it and I  
11 think Mr. Meyer and TBS were contracted to kind of take  
12 over this environment.

13 So to what degree that -- that creates  
14 conflict for them, you know, I think we could all  
15 speculate.

16 Q. So were you present for Mr. Meyer's testimony?

17 A. I was.

18 Q. And do you recall that his -- there were  
19 different levels of his company's involvement with  
20 United Way? There was a gradual transition and uptick  
21 in services; do you remember that?

22 A. Yeah, I do recall he was hired initially at  
23 some point and eventually became their -- their interim  
24 CIO or whatever his title is.

25 And those services -- in fact, all four of the

1 major categories that Mr. Naviloff cites in his  
2 report -- were replaced by Mr. Meyer and his company  
3 somewhere in the beginning of his tenure.

4 Q. Right. But when TBS was initially brought on  
5 right before Mr. Alrai was terminated, do you remember  
6 that testimony?

7 A. I do.

8 Q. Okay. And I'm sure Mr. Meyer can talk about  
9 this later, but the initial contract was to do this very  
10 thing that you were talking about, which is to determine  
11 what the services were, where things were, and how they  
12 needed to be transitioned; isn't that right?

13 A. That -- that's -- it's a fair comparison.  
14 I -- still I maintain it's not exactly the same, but I  
15 understand your point and I would agree that it's a  
16 similar service.

17 Q. Okay. And then later on, TBS and Mr. Meyer  
18 took on additional responsibility, including Mr. Meyer  
19 becoming the CIO and his company basically taking over  
20 what DigitalNet had been providing to United Way, right?

21 A. Yeah, I agree that appears to be the pattern  
22 of their engagement.

23 Q. Okay. So let me ask you this question.

24 Have you ever forensically preserved an IT  
25 environment for review?

1           A.     Yes.

2           Q.     Okay.  And in what context was that?

3           A.     So I've been hired to preserve -- to  
4     forensically preserve servers in cybersecurity cases,  
5     provide them to law enforcement and things of that  
6     nature.

7           Q.     Okay.  And can you tell me a name of a case or  
8     a law enforcement agency and a time frame for when you  
9     did that?

10          A.     I can't provide the name of the case because I  
11     typically don't follow the cases to trial, but I can  
12     tell you that I've provided forensic images to the  
13     United States Secret Service.  That's primarily who we  
14     provide forensic images for.

15          Q.     Let me stop you there.  I'm not talking about  
16     forensic images for like one computer.  I'm talking  
17     about this whole IT environment for a large company  
18     equivalent to the size of United Way with over a hundred  
19     employees, like that.

20          A.     Oh, I've never taken a forensic image of an  
21     entire IT environment.

22          Q.     Okay.  And when you were just mentioning how  
23     you've provided forensic support to Secret Service and  
24     other law enforcement, are we talking about more  
25     discrete activities, a handful of computers, cell

1 phones, that kind of thing?

2 A. Sometimes they're the entire -- I mean,  
3 certainly I've provided large forensic copies. So  
4 you're kind of -- you're alluding to it being  
5 comprehensive like every single server or something like  
6 that. That's not something we've ever done, nor  
7 something I think we would ever do.

8 However, I have provided numerous images, so a  
9 handful of servers, five or six servers, multiple  
10 desktops, in a fairly large image collection, not --

11 Q. Something to the scope of what you would --  
12 you would have liked in this case?

13 A. So in this case, I would have just liked  
14 forensic images of the four categories of things that  
15 Mr. Naviloff cited as part of his loss calculation,  
16 those categories. I think, honestly, that doesn't have  
17 to be a huge collection. It doesn't need to be every  
18 desktop. And I'm -- I'm not trying to be a purist  
19 about, well, you need to see everything or you can  
20 establish nothing. That's -- that's very far from the  
21 truth.

22 But the fact that we have -- a phone system is  
23 generally one server, right? I don't need to see every  
24 handset, but I would have liked to see the server.

25 In the -- in the virtual environment, I don't

1 need to see every single server in a virtual hosted  
2 environment, but I would have liked to see one.

3           You know, so there's a big difference between  
4 the totality of every single server and anything at all,  
5 right.

6           Q. But do you understand why there has been a lot  
7 of confusion, for lack of a better word, when there's  
8 reference repeatedly about an IT environment and of  
9 virtual desktop, virtual hosting, backups and telephone  
10 systems, without the level of specifications that you're  
11 now going through with us?

12          A. I -- truthfully, Attorney Le, I don't -- I  
13 don't understand where the confusion is because when --  
14 when IT professionals, right -- and RSM is a -- is, you  
15 know, a well respected company in the space. When  
16 counselors and IT professionals get together and talk  
17 about IT environments, especially when four specific IT  
18 environments are in question, I -- I don't know where  
19 the confusion really is.

20           And if there was confusion, I certainly would  
21 have been happy to explain further. This idea of  
22 confusion is kind of talked about a lot lately or has  
23 come up lately, but there didn't appear to be confusion,  
24 at least in my conversations with counsel, in the  
25 beginning.



1 Q. And which counsel are you referring to? It  
2 wasn't somebody from the government.

3 A. No, of course not. Defense counsel.

4 Q. All right. Okay. So you wouldn't be aware of  
5 confusion on the part of the government or Attorney  
6 Commisso or the individuals that Mr. Naviloff would have  
7 spoken about about what would be involved in this IT  
8 environment at United Way that you were interested in  
9 looking at?

10 A. I certainly never spoke with those people, not  
11 directly. I do understand and I would impress upon you  
12 that the -- the direct analysis of some of these  
13 environments is very important to a technical analysis  
14 and understanding the services that are delivered.

15 And so to what extent they would have informed  
16 Mr. Harrington as trial counsel of any kind of  
17 confusion, I imagine that that might have passed back to  
18 me. I don't -- I'm not aware of any confusion that  
19 existed pretrial.

20 THE COURT: Can I -- can I get an offer of  
21 proof from somebody here? See, here's what I'm confused  
22 about.

23 The -- the IT environment issue, right, is --  
24 I mean, there was never -- was there -- there was never  
25 an order from the -- there was an order of the Court to

1 do something on the -- when Attorney Harrington raised  
2 this issue, right?

3 And what -- so what's the confusion? Is it  
4 confused -- is there confusion about what the Court's  
5 order meant? Because the issue here -- okay.

6 Can you just put it in context for me, Ms. Le.

7 MS. LE: Sure. I think what your Honor is  
8 referring to about Mr. Harrington's pretrial discovery  
9 as it related to Mr. Naviloff is about running those  
10 keyword searches against the emails.

11 This issue of the IT environment goes back to  
12 Mr. Strauss and has been picked up by Ms. Brown and  
13 Mr. Eaton. So this was not part of your pretrial  
14 litigation.

15 THE COURT: Okay.

16 MS. LE: And I'll ask Mr. Davis and Mr. Hunter  
17 to pick up on that, but it's my appreciation that there  
18 was never a discovery dispute on this issue that  
19 occurred between Mr. Harrington and the government and  
20 it certainly wasn't escalated up to the Court.

21 THE COURT: Okay.

22 MS. LE: Does that make sense? I'm sorry.

23 THE COURT: It makes -- yes.

24 Now, I know it's -- this isn't some sort of  
25 failure to comply with the pretrial discovery order or

1 pretrial discovery agreement, which is really what this  
2 ended up being. It's a -- it's a -- I mean, it's an  
3 analysis of -- of what then? I mean, is there -- is  
4 there dispute over how the government complied with the  
5 Court's posttrial discovery orders? Like what -- I  
6 don't understand what we're arguing about anymore.

7 MS. LE: Not as related to the IT environment,  
8 and Mr. Naviloff -- I mean, Mr. Sgro would have to  
9 correct me, but a lot of Mr. Sgro's supplemental report,  
10 which is Exhibit Kk, emphasized the difficulties he had  
11 because he did not have access to this IT environment,  
12 your Honor.

13 THE COURT: Okay.

14 MS. LE: So that's why I was trying to address  
15 that.

16 THE COURT: But how could that -- so am I to  
17 assess that just in assessing Mr. Sgro's opinion or is  
18 there some relief I'm supposed to be in a position to  
19 grant about that? I still don't know where that all  
20 goes.

21 Maybe Ms. Brown --

22 MS. LE: Your Honor --

23 THE COURT: This might be something for  
24 Ms. Brown to explain to me.

25 What is this conversation about?

1 MR. EATON: I can -- I can jump in here.

2 So there was a -- there was a pretrial  
3 discovery request which was advised by Mr. Sgro  
4 regarding obtaining access to aspects of the IT  
5 environment. That request -- you know, nothing was  
6 provided.

7 THE COURT: Well, wait, wait, wait, wait,  
8 wait. Wait a minute. So now you're making it sound  
9 like there was a discovery violation pretrial and that's  
10 not what this motion is about.

11 MR. EATON: No, your Honor. But as Mr. Sgro  
12 testified on direct, there are indications that RSM  
13 reviewed aspects of the IT environment that he was not  
14 given access to.

15 THE COURT: Oh.

16 MR. EATON: So -- so that's really what this  
17 is about is that it was requested pretrial, Mr. Sgro  
18 thought it was useful, and now it appears that it did  
19 exist, at least --

20 THE COURT: Wait a minute. Wait a minute.  
21 No, I --

22 MR. DAVIS: Just a question, Mr. Eaton. Can  
23 you state the date and form of the specific request you  
24 refer to?

25 MR. EATON: So one of the requests here -- and

1 so Mr. Sgro cites this in his report, which is Exhibit  
2 Kk. I believe this is Exhibit 2. Yes, Exhibit 2.

3 And it discusses the IT environment, it  
4 discusses system logs, engineering records, project  
5 plans, et cetera. It discusses on the second page, you  
6 know, all these other items. So Naviloff's work papers.

7 Then on page 3 is when he gets into the email  
8 environment, the help desk communications, et cetera.

9 MS. LE: I'm sorry, your Honor.

10 Mr. Eaton, what exhibit are you referring to  
11 so that we can all be on the same page and maybe Tracy  
12 can pull it up.

13 MR. EATON: Yes, this is Exhibit Kk,  
14 Mr. Sgro's report. And down to page -- well, page 31 is  
15 the exhibit page, but it's Exhibit 2 to Mr. Sgro's  
16 supplemental report.

17 THE COURT: Let me try it this way, because I  
18 don't know what you're talking about.

19 And if -- Ms. Brown, if you need to -- let's  
20 get back to the this -- Tracy, I'm sorry. Let's get  
21 back to the screen with the gallery view of counsel,  
22 please.

23 Attorney Brown, what's your -- maybe I've just  
24 lost track of the thread of it. What is your argument  
25 regarding the IT environment? I know there's a failure

1 to preserve sort of argument, right, that -- that Mr. --  
2 I'm talking about the version of Mr. Strauss that was  
3 before Mr. Harrington made a request, right? But that's  
4 not something the government had any control over, as  
5 far as I know. Or is it?

6 MS. BROWN: Well, we -- as the Court has  
7 identified, we have two basic arguments: One is the  
8 Brady motion, which is we asked for things, we got them  
9 after trial, we're now saying they're exculpatory and we  
10 now have to go through the prejudice analysis.

11 Another part of our motion is a failure to  
12 preserve. And not to get too down in the weeds on that,  
13 there -- as you may recall, I don't know if it's the  
14 last hearing -- that the -- the government was involved  
15 in this case prior to Mr. Alrai's, for lack of a better  
16 word, offboarding of United Way.

17 And what we're seeing is they were in -- they  
18 were investigating this case; they were -- meaning the  
19 government, FBI, and the U.S. Attorney's Office. They  
20 were in a position to preserve information.

21 They were working with Attorney Commisso and  
22 others in terms of getting ready for a grand jury. The  
23 grand jury subpoena, I think, was before Mr. Alrai was  
24 even terminated. I think it was January -- or June 4th,  
25 2018.

1           So in that section of our motion, we're  
2     arguing that there is a failure to preserve and also  
3     part of that, too, is there was notice of a request to  
4     preserve.

5           So the prior, way back counsel, even going  
6     back before Mr. Harrington, I think the McLane firm  
7     represented Mr. Alrai, and they sent a letter, I think  
8     it was addressed to Mr. -- Attorney Commisso, and --  
9     saying, preserve the environment.

10          And so it's my understanding what Mr. Sgro is  
11     saying, like, hey, this is the first we've ever heard  
12     that, you know, there's some question about what the  
13     environment was. And so -- but it goes to the  
14     preserving; and doesn't go to the Brady. So that  
15     they're two separate issues.

16          THE COURT: But the -- okay. But the  
17     preserving argument, you're saying it doesn't go to  
18     Brady, so -- well, this is a Brady motion. So what does  
19     it go to? Like what do I do about it? How do I  
20     evaluate it? Does it go to sentencing and my evaluation  
21     of the opinions involved? Does it go to forfeit -- if  
22     it doesn't go to Brady, what are we talking about?

23          MS. BROWN: Well, part of -- I mean, I think  
24     we're all referring to it as a Brady motion, but part of  
25     our motion is a failure to preserve argument. It's a

1 last argument and --

2 THE COURT: Okay. I -- yeah. I --

3 MS. BROWN: Yeah. And the government's  
4 putting a lot of -- obviously we put a lot of focus on  
5 the Brady argument, which was here's these emails, we  
6 can all look at them and see are they exculpatory or are  
7 they not and we can have that analysis. But the failure  
8 to preserve is more complicated and they may be melding  
9 together here. I'm not sure.

10 I mean, Attorney Le can comment to where she's  
11 going with this. We didn't spend a lot of time on this  
12 in our direct because we think the -- the issues  
13 regarding the emails --

14 THE COURT: Wait a minute. I'm -- so you're  
15 telling me it's -- you're telling me it's sort of an  
16 additional argument --

17 MS. BROWN: Exactly.

18 THE COURT: -- but -- okay.

19 What relief are you requesting? Like in terms  
20 of Brady, you're basically saying, I need a dismissal  
21 or, in the alternative, I need a new trial. It's very  
22 simple. I can tell what you want, right, and I've got a  
23 couple options here, about how to do it. So put that  
24 aside for a minute.

25 On the failure to preserve, what relief are



1 you asking for? Like what can the Court order that you  
2 would be interested in having?

3 MS. BROWN: It would be the same remedy, your  
4 Honor. And we -- I think we've cited to a case which I  
5 can talk about more later. It's -- I refer to it as the  
6 cell tower or the radio tower case, where they didn't  
7 preserve --

8 THE COURT: Okay.

9 MS. BROWN: -- some evidence about that. And  
10 so that is a remedy --

11 THE COURT: Okay.

12 MS. BROWN: -- the same as Brady. It's a  
13 different analysis because one thing that's different --  
14 I mean, with Brady we've got the evidence now and you  
15 can make a decision as to whether it would have been  
16 exculpatory.

17 THE COURT: Yeah.

18 MS. BROWN: We still don't have this, we never  
19 had it, and so that -- then it's a whole different  
20 analysis other than what is the remedy and we're asking  
21 for the same remedy.

22 THE COURT: I see. Thank you. I -- I  
23 think -- this is as much on the Court as anybody else.  
24 I think I conflated it with Brady. And if it's a  
25 different -- you know, I don't even know what the power

1 would be to do it, but you're telling me there's  
2 authority for it and I'll focus on it. Okay.

3 And, Ms. Le, did you want to respond to that  
4 or did anybody want to respond to that in any kind of  
5 way? I was just trying to put it in a box of the  
6 Court's authority to order relief. Brady gives me  
7 authority to order relief under some circumstances, but  
8 this failure to preserve is one I'm not as familiar  
9 with.

10 MS. LE: Your Honor, before you get to, you  
11 know, remedies in this area, number one, Ms. Brown,  
12 Mr. Eaton have to explain what authority they have to  
13 order the government to get a third party to provide  
14 their, quote, IT environment, whatever that might mean,  
15 that is not used as part of our -- our third-party  
16 expert's testimony, number one.

17 Number two, the reason I focused on it is  
18 because Mr. Sgro, in his original expert opinion, as  
19 well as his supplemental expert opinion, placed  
20 significant importance on this issue and that's why I'm  
21 kind of wrapping up my cross on this area. Because, to  
22 be frank, I said this to Mr. Sgro, at least for the  
23 government's attorneys, we don't understand what that  
24 term, IT environment, means. It's not a legal term of  
25 art. And I have yet to see any authority that would

1     compel the government to obtain such information and to  
2     even provide it, your Honor.

3             So we don't, respectfully, think that we  
4     should be punished for something we have no obligation  
5     to do. And my focus on it here is purely to kind of  
6     parse out with Mr. Sgro what he means because he is, by  
7     all accounts, the best person to educate the attorneys  
8     and your Honor on this issue.

9             THE COURT: I guess -- yeah, I -- I totally  
10    understand your point. I get -- as I try to piece it  
11    together in my mind, you know -- I understand your point  
12    about there's no -- there's no requirement that the  
13    prosecutor even provide this information. And that --  
14    by the way, that's true of -- that's true of a lot of --  
15    that's true of other evidence that we're talking about  
16    here. The rules of discovery don't -- don't necessarily  
17    require every bit of what we're talking about here to be  
18    produced and the parties pretrial kind of worked out  
19    what they thought was reasonable and it seemed to work.

20            When it comes to Brady, my thought is during  
21    that process, if the prosecution becomes aware of  
22    exculpatory evidence, it should provide it. Even if  
23    it's not part of the discovery that they agreed to  
24    provide eventually, if they become aware of exculpatory  
25    evidence, they should provide it.

1           I think what I'm getting -- what I'm gleaning  
2   from Attorney Brown's argument here is that I guess --  
3   I'm not even sure this works factually in this case, but  
4   if during the time the prosecution is working with  
5   counsel for the victim, Mr. -- Mr. Commisso here, if  
6   during that time a -- you know, sort of an evidence  
7   freeze, right, a discovery freeze request is made -- in  
8   this case, it was a preserve the environment request by  
9   Strauss from the McLane firm.

10           If during that time, I guess, the prosecutor  
11   and counsel for the victim are working together side by  
12   side, I guess there's some argument -- and I'm not sure  
13   about the authority either. I don't want anybody to get  
14   the impression I've adopted this, okay? But there might  
15   be an obligation to at that time take some measure,  
16   knowing that the defendant has made this request as the  
17   target to preserve evidence, and, therefore, be in a  
18   position at some point to evaluate it for -- for some  
19   type of due process angle involving exculpatory  
20   evidence. I don't know.

21           But I'll have to take a closer look at the  
22   case Ms. Brown just talked to me about and whatever law  
23   is there, I have in my mind is Brady. And it's a little  
24   bit different.

25           Your point's well taken, Ms. Le, that, you

1 know, these obligations are certainly not things we're  
2 familiar with hearing about or seeing and I actually  
3 approach it the same way. I need to -- I need to know  
4 what the authority is for my -- my ability to address  
5 it, your obligation to preserve it, or anything else.  
6 And that's -- that's something I'll work toward. I'm  
7 just trying to put this evidence in context as I -- as I  
8 receive it.

9           You can continue to -- you can continue your  
10 cross.

11           MS. LE: Your Honor, I'm sure you and Mr. Sgro  
12 are happy to hear that I'm almost done.

13           Q. Mr. Sgro, are you a little relieved?

14           A. I'm happy to be here as long as you and your  
15 Honor want me here.

16           THE COURT: Yeah.

17           Q. Well, thank you for your time.

18           Sir, do you remember at the beginning of your  
19 cross, when we talked on November 17th, I asked you  
20 about your practice of citing in your expert report,  
21 both the original and the supplement, to the sources and  
22 documentation for your opinion?

23           A. I do recall you asking questions to that  
24 nature.

25           MS. LE: Okay. And can we pull up Exhibit Kk

1 for Mr. Sgro, Tracy?

2 Thank you.

3 Is that it? Can we go to another page, just  
4 make sure Mr. Sgro can see that that is his report that  
5 we're referring to.

6 Q. Is that your report, Mr. Sgro, that we're  
7 referring to here --

8 A. Yes.

9 Q. -- the supplement?

10 So -- so your supplement, you did a -- you  
11 attached some exhibits, a handful of exhibits; is that  
12 right?

13 A. That's correct.

14 Q. Okay. Which is a little different than what  
15 you did with your original opinion, which didn't  
16 actually include any exhibits or citations; is that  
17 right?

18 A. That's correct.

19 Q. Okay. And in addition --

20 A. Well, hold on. I apologize. It's not that it  
21 didn't include any citations. It didn't include any  
22 exhibits.

23 Q. But -- which one was your original exhibit?

24 Mr. Eaton, can you help me with the numbered  
25 exhibit that you submitted, Mr. -- Mr. Sgro's original

1 supplemental -- I mean original expert report?

2 MR. EATON: Original report, which exhibit it  
3 is for this hearing?

4 MS. LE: Yes.

5 MR. EATON: I don't know that the original  
6 report is an exhibit to this hearing.

7 MS. LE: But it was attached to your motion;  
8 is that right?

9 MR. EATON: Yes. Yeah.

10 THE COURT: Yes. Yeah, it's part of the  
11 record. It's part of the record.

12 Q. Okay.

13 A. Yeah. Attorney Le --

14 Q. So Exhibit G, that was attached as part of the  
15 record.

16 A. Attorney Le, I was just going to offer that I  
17 acknowledge that there were no exhibits attached to --  
18 as an addendum to that report or in the -- you know, in  
19 the appendices of that report. I was just pointing out  
20 that there are Bates number citations in that report. I  
21 think you said you don't believe there are any cites and  
22 there are.

23 Q. Okay. So -- but this -- so let's just go back  
24 to Kk. The exhibits you attached are just a select  
25 number of exhibits, right?

1 A. That's correct.

2 Q. Okay. And then you also cite to certain  
3 records that were produced by the government in pretrial  
4 discovery, right?

5 A. Yes, that's correct.

6 Q. Okay. Now, can you tell me if you worked with  
7 anyone else at your company, I believe it's called Atom  
8 A-t-o-m, in preparing this report?

9 A. That's correct. I worked with a single  
10 associate in preparing this report.

11 Q. And who was that associate, sir?

12 A. Her name is Heather Campbell.

13 Q. And is Ms. Campbell credited in your report?  
14 I can't remember off the top of my head.

15 A. No. She only worked with, you know, things of  
16 a clerical nature like finding documents and things of  
17 that. She has no opinions or anything in the report.

18 Q. Okay. So she pulled documents and she kind of  
19 helped organize materials for you to review later?

20 A. Yeah, just stuff of a very basic  
21 administration -- administrative. Pardon.

22 Q. All right. And did you get any input from  
23 defense counsel in preparing this supplemental report?

24 A. Defense counsel helped me find exhibits and  
25 that sort of thing. There's certainly cases where we



1 discussed documents, but they don't provide direct input  
2 into the report, no.

3 Q. Okay. And how about Mr. Alrai, did he provide  
4 any input into the report?

5 A. No, Mr. Alrai doesn't produce -- doesn't put  
6 any input into the report.

7 Q. Okay. And, to your knowledge, have you  
8 provided the government with all the sources and the  
9 documentation for your opinions in your original as well  
10 as supplemental expert report?

11 A. I think in one case you may have pointed out a  
12 clerical error or a missing cite in my original report.  
13 I -- if there are any errors of a clerical nature, then  
14 I will happily own those and would be happy to correct  
15 them. But to the best of my knowledge, I think I've  
16 supported my opinion with cites where I deemed  
17 appropriate.

18 Q. Okay. Now, sir, are you aware that the  
19 government has requested that you produce materials  
20 including sources and documentation for your original  
21 opinion as well as your expert opinion?

22 A. When was that request made? Or in general?

23 Q. That was by email. Let me just pull it up.  
24 One second.

25 I have the email printed up in my office,

1 Mr. Sgro, but I did not bring it home with me.

2 A. Was it a request --

3 Q. It was earlier this summer.

4 A. Okay. I don't believe I'm in receipt of a  
5 request to produce any additional citations.

6 Q. But you've preserved that information and if  
7 we were to request that in a reciprocal discovery, are  
8 you prepared to produce that material to us?

9 A. I have copies of all of the documentation that  
10 I was provided by counsel and I can resubmit that to  
11 you.

12 Q. Okay. And anywhere in your either original  
13 report or the supplemental report, did you incorporate  
14 information that was provided to you by your client?

15 A. I don't receive information directly from the  
16 client, from the defendant.

17 Q. Okay. How about information that counsel  
18 obtained from the client?

19 A. I don't believe so. I -- I generally try to  
20 work only with defense counsel and -- and I believe  
21 that's -- that's absolutely true in this case.

22 Where they get information from, it --  
23 generally when they talk to me is cited -- they cite a  
24 document and we maybe together review a document, that  
25 sort of thing.

1           Q.     Okay.  So to the extent -- and, more  
2 specifically, this relates to your original expert  
3 report.

4                     To the extent that you made conclusions and  
5 references to RSM's -- I mean, not RSM's, I'm sorry --  
6 DigitalNet's capabilities and services in Pakistan,  
7 would those records have come from defense counsel?

8           A.     So all of the documents that I analyzed as  
9 part of my opinion come from defense counsel.  Where  
10 they obtain them from I'm not entirely sure, but I'm  
11 provided documents only by defense counsel.

12          Q.     And do you maintain copies of that  
13 documentation?

14          A.     I do.

15          Q.     Okay.  And will you be able to provide that to  
16 us should we ask that they be produced in reciprocal  
17 discovery?

18          A.     I believe so.

19                     MS. LE:  Okay.  Well, thank you very much,  
20 sir, for your patience.

21                     And, Mr. Eaton, I will tender the witness to  
22 you, sir.

23                     THE COURT:  Redirect, Mr. Eaton?

24                     MR. EATON:  Thank you.  I will be brief as  
25 well.

REDIRECT EXAMINATION

BY MR. EATON:

Q. So I want to go back, Mr. Sgro.

When you were first retained by Mr. Alrai's counsel in this case, what were you hired to do?

A. Analyze documents and IT environments and review Mr. Naviloff's opinion and documents that they provided me to review in this case.

Q. Okay. So as a technical expert, when you're reviewing the findings of an expert such as Mr. Naviloff, how do you approach that review and evaluation?

A. Well, you know, I read thoroughly through his opinion and how he discusses the technical environments, which environments and which services he finds issue with regard to either the costing or the delivery of those services. And then independently I look at the documentation, presumably the same documentation that he's looking at, to form my own opinion of both, you know, the potential for delivery or nondelivery of those services, how they were used, what those services are, things of that nature.

Q. Okay. So is it -- is it important to you to review information that you know that Mr. Naviloff would have relied upon?

1           A.     Yeah, absolutely.  So, you know, as part of  
2 my -- my charge here to assist counsel in -- in things  
3 like cross-examination of an expert and certainly in  
4 forming my own opinion, it's really important that  
5 Mr. Naviloff and I are looking at a similar set of both  
6 documents and environments.

7           Q.     Okay.  So is it also important for you to  
8 review and render your own opinions on information or  
9 documents that Mr. Naviloff may have chosen not to rely  
10 upon?

11          A.     Yeah, absolutely.  I think the -- the decision  
12 to rely on something or not rely on something, you know,  
13 it requires some expertise.  And in a technical case,  
14 the -- you know, that was something that I would  
15 definitely like to look at.  It would certainly help me  
16 understand his opinion and inform my own.

17          Q.     And then, you know, to bring this back to the  
18 emails, right, the posttrial emails that you've  
19 reviewed, why, if at all, would it have been important  
20 for you to have those prior to trial?

21          A.     So there's a lot of things discussed in those  
22 emails.  One is the existence of Mr. Ryan Gilpin, right,  
23 which certainly is someone whose expertise is absolutely  
24 in question and to what effect he had on Mr. Naviloff's  
25 opinion.

1           They also -- we had discovered scanning of the  
2     environment that was done, of an environment that I had  
3     never seen, scans that I had never seen as attachments  
4     to those emails.

5           There's activity there from market analysis  
6     to -- to certain discussions that they are having about  
7     the technical underpinnings that are revealed in that  
8     discovery -- that posttrial discovery that would have  
9     been valuable.

10          Q.     All right. Excuse me. So do you recall you  
11     were asked on cross about the -- and you discussed, you  
12     know, if you recall, the specificity of the DigitalNet  
13     invoices; I think you were discussing Insight/OVH, the  
14     hosting services. Do you recall that?

15          A.     Yeah, I recall that.

16          Q.     Okay. So does the lack of specificity in  
17     invoices or contracts or documents such as those, does  
18     that affect the accuracy of an analysis that relies on  
19     contract and invoice review --

20          A.     Absolutely.

21          Q.     -- of services provided?

22                 Sorry. Go ahead.

23          A.     Sure. Yeah. I mean, the lack of specificity  
24     is perhaps unfortunate, like we -- we don't know what --  
25     what is in some of those larger buckets.

1           And so from a purely financial -- if you're  
2 just reading the letter of the contract, I think you're  
3 severely limited in making apples-to-apples comparisons,  
4 to use Mr. Naviloff's term. And if you looked at it  
5 through a -- so in that case, you have to look at it  
6 through a technical lens. And when you look at these  
7 services through a technical lens, you can -- you can  
8 infer quite a bit about some of these contracts, about  
9 where they line up and where they, frankly, don't line  
10 up.

11           MR. EATON: All right. Thank you, Mr. Sgro.  
12 That's all I have for you.

13           THE COURT: Is there any recross?

14           MS. LE: Can I ask one question?

15           THE COURT: Of course.

16                           RECROSS-EXAMINATION

17           BY MS. LE:

18           Q. Mr. Sgro, by infer, that means -- that's  
19 another word for to guess, right? Because you don't  
20 know.

21           A. So, yeah. I mean, what I would say is that  
22 that's part of the trouble that I think we've discussed  
23 in this case quite a bit. Mr. Naviloff makes quite a  
24 few inferences in informing his opinion.

25                           And in some cases, inferences I think are the

1 best we can do with the information we have and they're  
2 reasonable, and in some cases those inferences are very  
3 wrong. And I think we've pointed out some of those.

4 MS. LE: Can I ask one more question, Judge?

5 THE COURT: Yeah.

6 Q. Okay. But you know that Mr. Naviloff  
7 recognized the challenges because of things that neither  
8 you nor he can know for sure, so he conducted a separate  
9 loss calculation that's based on personal enrichment  
10 that results in a higher loss amount to kind of check  
11 himself. You know that, right?

12 A. I understand that Mr. Naviloff did two loss  
13 calculations. To what effect the second calculation is  
14 is definitely beyond my technical expertise.

15 MS. LE: Thank you, sir. Have a nice day.

16 THE COURT: Okay. Thank you, sir, Mr. Sgro.

17 (Witness excused.)

18 THE COURT: Perfect actual time to -- it's  
19 almost -- we'd normally go longer before the break, but  
20 I've got to attend to something over the lunch break.  
21 So I think what I'm going to do is try to break from  
22 noon to 12:15 -- to 1:15 today. All right?

23 I do have one question for you, Ms. Brown.  
24 It's more just purely practical, really, but I just  
25 wondered what your thoughts are on it, if you have any.



1                   Here's what I'm wondering. You know, as  
2 Mr. Hunter pointed out for us last time, one of the ways  
3 Rule 33 works is the Court can allow you to recall  
4 witnesses and present, right?

5                   MS. BROWN: Correct.

6                   THE COURT: Now, if I ordered some relief here  
7 based on your motion, I -- have you already done that?  
8 Have you already done that or is that something -- how  
9 would it look different from what you're doing now?

10                  MS. BROWN: Well, that's a very interesting  
11 question. I did some research on that and I found a  
12 lawyer -- I forgot which state, Mike might remember --  
13 who had done a brief on this. He shared the brief with  
14 me.

15                  I've so far found two cases in the country  
16 where there's been an issue and I don't think it's ever  
17 happened, at least from what we can find out. There's a  
18 case in Maryland that's a state court case that's on  
19 appeal -- there's two levels, appellate levels, in  
20 Maryland -- and there's another federal case that I  
21 found.

22                  The brief that I have found and that I agree  
23 with the position is that though Rule 33 says that you  
24 can do that, it's our position that that wouldn't be  
25 constitutional in this case because, you know, I kind --

1 we're going -- we're like a *Kyles v. Whitley* type of  
2 argument; that this would have changed the whole tenor  
3 of the trial; that we not only could have made specific  
4 cross-examination points, but we could have took on the  
5 entire investigation, which, you know, now that we have  
6 these emails to kind of track -- and you'll see more of  
7 this when we cross-examine Attorney Commisso -- that we  
8 have these emails that we can track with sort of a  
9 partnership between the alleged victim and the  
10 government and how much the alleged victim was -- was  
11 working with the government, that that just kind of --  
12 like just say hypothetically if you could use this  
13 evidence, we feel that you can't and that's an argument  
14 that we intend to make this afternoon.

15 I would also argue, too, you know, it's kind  
16 of like a -- a situation where you do a discovery  
17 deposition and then the person dies. And you're like,  
18 wait a minute, I would have done it differently if, you  
19 know, I knew it was going to be used at trial, you know,  
20 because I was -- I was doing -- had one focus of the  
21 discovery deposition, I was trying to find out  
22 information, and I didn't really cross-examine the  
23 witness, I didn't really present the witness in the same  
24 way that I would have if this were a trial --

25 THE COURT: Right.

1 MS. BROWN: -- you know.

2 So I think we have problems both ways. And I  
3 have a couple cases, I can give them to you later on,  
4 why we think you can't do that. But that's --

5 THE COURT: I guess -- there's sort of two  
6 questions, right?

7 MS. BROWN: Yeah.

8 THE COURT: You answered -- I think you  
9 answered both, but the one -- you're basically saying  
10 that that procedure would not be sufficient to begin  
11 with here. And I -- I'm, of course, open to hearing  
12 that, but my question was suppose I did order it,  
13 suppose I disagreed with you and I ordered it, right?  
14 Your point, I think, of what you just said was this is  
15 not the record you'd want; you'd want to re-present it  
16 if I did order it. Right?

17 MS. BROWN: Correct.

18 THE COURT: Okay. Thank you.

19 Okay. It's 12:01. Let's do our best to  
20 reconvene at 1:15, please.

21 Anything for the Court before I recess here?

22 MS. BROWN: Just real quick, your Honor.

23 And I don't know, you'll probably have time  
24 over lunch, but what we were talking about earlier about  
25 the failure to preserve, it's about four pages in our

1 motion. It's from page 22 to 25 and it sums it up much  
2 better than I did earlier. It cites a couple of the  
3 cases.

4 But I just -- that's why we haven't spent as  
5 much time on that, but that's where that is. It is  
6 Document 164, 22 through 25.

7 THE COURT: Nayha and I have been talking  
8 about it between ourselves during the proceeding, so I'm  
9 focused on it.

10 MS. BROWN: Okay. Great.

11 MR. COMMISSO: One other thing, which is John  
12 Meyer is on standby. So we need to know, do you need  
13 him available at 1:15 or some other time?

14 MS. BROWN: No. We're going to call you at  
15 1:15. So we would need him to be on standby for the  
16 rest of the afternoon, but he doesn't -- you know, if he  
17 wants to, you know, put -- I guess he'll be in the --

18 THE COURT: Sounds like -- but he shouldn't  
19 have to sit in the waiting room. I mean --

20 MR. COMMISSO: Right.

21 THE COURT: So I guess -- it's 1:15. I guess  
22 just tell him to start -- I think Mr. Commisso's  
23 probably going to take a while.

24 MS. BROWN: I would say at least an hour and a  
25 half.

1           THE COURT: Yeah. So I guess you can tell  
2 him, Mr. Commisso, that he can be -- you know, he can at  
3 least not sweat getting called until like 3:30.

4           MR. COMMISSO: Okay. I will let him know.

5           THE COURT: That's my best guess.

6           MR. COMMISSO: Thank you.

7           THE COURT: Until then, we're in recess.

8           MR. HUNTER: Thank you, your Honor.

9           (Lunch recess taken at 12:02 p.m.)

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C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that  
the foregoing transcript is a true and accurate  
transcription of the within proceedings, to the best of  
my knowledge, skill, ability and belief.

Submitted: 1/7/2021

/s/ Liza W. Dubois  
LIZA W. DUBOIS, RMR, CRR